

EXHIBIT B

HIGHLY CONFIDENTIAL DEPOSITION OF GREG HAMILTON
CONDUCTED ON THURSDAY, JANUARY 21, 2010

1 (Pages 1 to 4)

<p style="text-align: right;">1</p> <p>1 UNITED STATES DISTRICT COURT</p> <p>2 DISTRICT OF MASSACHUSETTS</p> <p>3</p> <p>4 IN RE: PHARMACEUTICAL)</p> <p>5 INDUSTRY AVERAGE WHOLESALER)</p> <p>6 PRICE LITIGATION) MDL No. 1456</p> <p>7)</p> <p>8) Master File No.</p> <p>9 THIS DOCUMENT RELATES TO:) 1:01-CV-12257-PBS</p> <p>10)</p> <p>11 United States ex rel.) Sub-Category Case</p> <p>12 Linnette Sun and Greg) No. 1:08-CV-11200</p> <p>13 Hamilton, Relators)</p> <p>14)</p> <p>15 v.)</p> <p>16)</p> <p>17 Baxter Hemoglobin)</p> <p>18 Therapeutics and Baxter)</p> <p>19 International Inc.)</p> <p>20</p> <p>21 HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER</p> <p>22</p> <p>23 Deposition of GREG HAMILTON, taken before</p> <p>24 MARGARET A. BACHNER, CSR, RMR, CRR, and Notary Public,</p> <p>25 pursuant to the Federal Rules of Civil Procedure for</p> <p>the United States District Courts pertaining to the</p> <p>taking of depositions for the purpose of discovery, at</p> <p>Suite 600, 300 North LaSalle Street, Chicago,</p> <p>Illinois, on the 21st day of January, A.D. 2010, at</p> <p>10:32 a.m.</p>	<p style="text-align: right;">3</p> <p style="text-align: center;">I N D E X</p> <p>1 WITNESS EXAMINATION</p> <p>2 GREG HAMILTON</p> <p>3 By Mr. Jackson 5</p> <p>4</p> <p>5</p> <p>6 E X H I B I T S</p> <p>7 DEPOSITION EXHIBIT FOR IDENTIFICATION</p> <p>8 Number 1 - Notice of Deposition of Relator 5</p> <p>9 Greg Hamilton</p> <p>10</p> <p>11 Number 2 - Pages from drugfraudsettlement.com 16</p> <p>12 re: Attorneys</p> <p>13 Number 3 - Page from drugfraudsettlement.com 16</p> <p>14 re: Drug Expert Greg Hamilton, Sr.</p> <p>15</p> <p>16 Number 4 - Greg Hamilton curriculum vitae 29</p> <p>17</p> <p>18 Number 5 - Document entitled Baxter Products 30</p> <p>19 W/AWP History, GH000001-000009</p> <p>20 Number 6 - Declaration of Greg Hamilton 35</p> <p>21 Number 7 - Amended Complaint for Damages 37</p> <p>22 Number 8 - Document entitled Hemophilia 46</p> <p>23 Resources of America, Inc.,</p> <p>24 GH000010-000022</p> <p>25 Number 9 - Document entitled Express Scripts, 47</p> <p>Inc. First DataBank File Inquiry,</p> <p>GH000023-000046</p> <p>Number 10 - Document entitled Baxter 49</p> <p>BioScience, Customer: Curascript,</p> <p>GH000047</p> <p>Number 11 - RBC Capital Markets Document 54</p> <p>entitled "A Changing Paradigm In</p> <p>Hemophilia," GH000048-000071</p>
<p style="text-align: right;">2</p> <p>1 There were present at the taking of this</p> <p>2 deposition the following counsel:</p> <p>3</p> <p>4 on behalf of the Relators;</p> <p>5 BY: MARK ALLEN KLEIMAN, ESQUIRE</p> <p>6 2907 Stanford Avenue</p> <p>7 Venice, California 90292</p> <p>8 310-306-8094</p> <p>9</p> <p>10 on behalf of Baxter Hemoglobin Therapeutics</p> <p>11 and Baxter International Inc.;</p> <p>12 DICKSTEIN SHAPIRO LLP</p> <p>13 BY: J. ANDREW JACKSON, ESQUIRE</p> <p>14 RUCHI JAIN, ESQUIRE</p> <p>15 1825 Eye Street, N.W.</p> <p>16 Washington, DC 20006-5403</p> <p>17 202-420-2200</p> <p>18</p> <p>19 on behalf of Bayer Corporation.</p> <p>20 SIDLEY AUSTIN LLP</p> <p>21 BY: ENJAMIN KEITH, ESQUIRE</p> <p>22 One South Dearborn Street</p> <p>23 Chicago, Illinois 60603</p> <p>24 312-853-7814</p> <p>25</p> <p>ALSO PRESENT:</p> <p>MR. MICHAEL BOLTON,</p> <p>In-House Counsel, Baxter International Inc.</p>	<p style="text-align: right;">4</p> <p style="text-align: center;">E X H I B I T S</p> <p>1 DEPOSITION EXHIBIT FOR IDENTIFICATION</p> <p>2 Number 12 - U.S. News article entitled 56</p> <p>3 "Court: HMOs Can Be Made to</p> <p>4 Open Networks," Gh000072-000074</p> <p>5 Number 13 - Deposition of Patricia Kay 57</p> <p>6 Morgan, GH000126-000290</p> <p>7</p> <p>8 Number 14 - State of Texas Notice of Intention 58</p> <p>9 to Take Oral Depositions,</p> <p>10 GH000089-000125</p> <p>11</p> <p>12 Number 15 - Deposition Summary of Patricia Kay 59</p> <p>13 Morgan, GH000291-000320</p> <p>14 Number 16 - Document entitled Global Market 61</p> <p>15 Research Hemophilia, GH000321-</p> <p>16 001495</p> <p>17 Number 17 - Document entitled The Plasma 69</p> <p>18 Fractions Market in the United</p> <p>19 States, GH001527-001744</p> <p>20</p> <p>21 Number 18 - Summary of First DataBank 72</p> <p>22 Information on Selected Drugs,</p> <p>23 GH001526</p> <p>24 Number 19 - Appointment Book excerpts, 77</p> <p>25 GH001497-001523</p> <p>Number 20 - 4/22/05 letter from Kleiman to 86</p> <p>Gonzales and Theis, GH001525</p> <p>Number 21 - Memorandum in Opposition to 98</p> <p>Baxter's Motion to Dismiss</p>

<p>5</p> <p>1 (The witness was duly sworn.)</p> <p>2 GREG HAMILTON,</p> <p>3 called as a witness herein, having been first duly</p> <p>4 sworn, was examined and testified as follows:</p> <p>5 EXAMINATION</p> <p>6 BY MR. JACKSON:</p> <p>7 Q. Mr. Hamilton, my name is Andy Jackson. To</p> <p>8 my left is Ruchi Jain. We represent Baxter in this</p> <p>9 case.</p> <p>10 (Deposition Exhibit Number 1 was</p> <p>11 marked for identification.)</p> <p>12 (Document tendered to the</p> <p>13 witness.)</p> <p>14 BY MR. JACKSON:</p> <p>15 Q. Let me show you what's been marked as</p> <p>16 Deposition Exhibit 1. Deposition Exhibit 1 is a</p> <p>17 Notice of Deposition regarding you and this matter.</p> <p>18 Have you seen that document before?</p> <p>19 A. I believe so.</p> <p>20 Q. You're appearing today pursuant to that</p> <p>21 Deposition Notice?</p> <p>22 A. Yes.</p> <p>23 Q. Mr. Hamilton, I'm going to be asking a</p> <p>24 series of questions today. I need you to answer</p> <p>25 aloud, no shaking head up or down or left to right so</p>	<p>7</p> <p>1 think it was like a response to a motion of yours.</p> <p>2 Q. So, the Relators' Opposition to our Motion</p> <p>3 to Dismiss, you think that's what it was?</p> <p>4 A. I think that's what it was.</p> <p>5 Q. Okay. Any other documents you reviewed in</p> <p>6 preparation for your deposition?</p> <p>7 A. Not that I recall.</p> <p>8 Q. Did you speak with Miss Sun?</p> <p>9 A. No, I did not.</p> <p>10 Q. Sir, have you been deposed before?</p> <p>11 A. Yes, I have.</p> <p>12 Q. How many times?</p> <p>13 A. I believe three.</p> <p>14 Q. Can you briefly describe each of those</p> <p>15 depositions, what case it was and what the subject</p> <p>16 matter of the deposition was?</p> <p>17 A. Okay. One was a civil fraud case involving</p> <p>18 Vioxx.</p> <p>19 The second was the Kentucky AWP case.</p> <p>20 And the third was -- I believe it's a civil</p> <p>21 case on product liability involving a hepatitis C</p> <p>22 outbreak in Las Vegas.</p> <p>23 Q. When was the deposition regarding the Vioxx</p> <p>24 matter?</p> <p>25 A. About a year and a half ago.</p>
<p>6</p> <p>1 we can make sure we get a full record. Is that okay</p> <p>2 with you?</p> <p>3 A. Yes.</p> <p>4 Q. And I presume you're not on any medication</p> <p>5 or under any other kinds of drugs that would impair</p> <p>6 your ability to understand my questions or your</p> <p>7 ability to testify today.</p> <p>8 MR. KLEIMAN: There's no question pending.</p> <p>9 BY MR. JACKSON:</p> <p>10 Q. You can answer the question.</p> <p>11 A. I understand. I was waiting -- if you'd</p> <p>12 like me to affirm your statement, yes, you're correct.</p> <p>13 Q. That's fine. And you understand that there</p> <p>14 may be times today when your counsel objects to my</p> <p>15 question. Unless you're instructed by your counsel to</p> <p>16 answer, you go ahead and answer the question.</p> <p>17 Do you understand that?</p> <p>18 A. Yes, I do.</p> <p>19 Q. Mr. Hamilton, did you review any documents</p> <p>20 in preparation for your deposition?</p> <p>21 A. Yes, I did.</p> <p>22 Q. What documents did you review?</p> <p>23 A. I reviewed a rough version of Linnette</p> <p>24 Sun's recent deposition. I reviewed my Declaration.</p> <p>25 And I quickly scanned our counsel's response to -- I</p>	<p>8</p> <p>1 Q. What was your role in that case?</p> <p>2 A. I was an expert witness.</p> <p>3 Q. For whom?</p> <p>4 A. For the plaintiff.</p> <p>5 Q. Who was the plaintiff?</p> <p>6 A. Henry Chapin -- or Channon. Sorry.</p> <p>7 Q. And did your testimony in that case concern</p> <p>8 AWP in any way; that is, average wholesale price?</p> <p>9 A. No, it did not.</p> <p>10 Q. How about average manufacturer price?</p> <p>11 A. No, it did not.</p> <p>12 Q. Best price?</p> <p>13 A. No, it did not.</p> <p>14 Q. And what was the gravamen? What was the</p> <p>15 principal matter at issue in the Vioxx case?</p> <p>16 A. I'm not sure -- are you talking about the</p> <p>17 principal matter for the plaintiffs, his lawyers or my</p> <p>18 role as the expert witness?</p> <p>19 Q. The plaintiff in the first instance.</p> <p>20 A. The plaintiff had damages as a result of</p> <p>21 being infected with hepatitis C from -- at least they</p> <p>22 were alleging that at this particular center.</p> <p>23 Q. And what was your role as the expert in</p> <p>24 that case?</p> <p>25 A. My role was to describe and discuss the</p>

<p style="text-align: right;">9</p> <p>1 methods and operations of pharmaceutical marketing.</p> <p>2 Q. And in the Kentucky AWP matter, I believe</p> <p>3 you testified that your role there was as an expert?</p> <p>4 A. Yes.</p> <p>5 Q. What topic areas were you identified as a</p> <p>6 potential expert for?</p> <p>7 A. I'd have to go back and get -- if you want</p> <p>8 exact details, but in general --</p> <p>9 Q. In general.</p> <p>10 A. In general it was pharmaceutical marketing,</p> <p>11 pricing and specifically AWP.</p> <p>12 Q. And when we use the phrase or the word</p> <p>13 "AWP" or the letters "AWP," we'll understand it to</p> <p>14 mean average wholesale price?</p> <p>15 A. That is correct.</p> <p>16 Q. And who were your retained by in that</p> <p>17 matter?</p> <p>18 A. Chuck Barnhill.</p> <p>19 Q. You were an expert for the plaintiffs in</p> <p>20 that case?</p> <p>21 A. That's correct.</p> <p>22 Q. And was that a qui tam case, a False Claims</p> <p>23 Act case?</p> <p>24 A. No, I don't believe it was. It was the</p> <p>25 State of Kentucky versus several defendants.</p>	<p style="text-align: right;">11</p> <p>1 So, those are the only three cases you've</p> <p>2 testified in; Vioxx, Kentucky AWP and the hepatitis C</p> <p>3 case?</p> <p>4 A. When you say "testified," if you're</p> <p>5 referring to in court, I've already answered that I</p> <p>6 have not testified in court.</p> <p>7 Q. In deposition.</p> <p>8 A. In deposition, yes.</p> <p>9 Q. All right. Are there any other court</p> <p>10 matters that you have been retained as a testimonial</p> <p>11 or consulting expert?</p> <p>12 MR. KLEIMAN: Objection. Compound.</p> <p>13 BY MR. JACKSON:</p> <p>14 Q. You can answer the question.</p> <p>15 A. Okay. But let me break it down. You want</p> <p>16 to know if there are any other cases ever in my entire</p> <p>17 career that I've been retained in the capacity either</p> <p>18 as an expert witness or as a consultant?</p> <p>19 Q. Yes.</p> <p>20 MR. KLEIMAN: To the extent to which Mr. Hamilton</p> <p>21 has been retained as an expert on cases that are under</p> <p>22 seal, I'm going to instruct him not to answer. As to</p> <p>23 all other matters he can.</p> <p>24 BY THE WITNESS:</p> <p>25 A. In light of counsel's objection, much of my</p>
<p style="text-align: right;">10</p> <p>1 Q. And then the civil case, the product</p> <p>2 liability matter regarding hepatitis C, what was your</p> <p>3 role in that case?</p> <p>4 A. My role was as a -- an expert in</p> <p>5 pharmaceutical marketing.</p> <p>6 Q. Did that case have anything to do with AWP,</p> <p>7 AMP or BP?</p> <p>8 A. No, it did not.</p> <p>9 Q. Have you ever testified at trial before?</p> <p>10 A. No, I have not.</p> <p>11 Q. Have you ever been accepted by a Court as</p> <p>12 an expert witness?</p> <p>13 A. I'm not sure.</p> <p>14 Q. Have you ever testified during a trial?</p> <p>15 A. No, I have not.</p> <p>16 Q. Mr. Hamilton, were you aware that today's</p> <p>17 deposition is limited to matters related to</p> <p>18 jurisdictional issues, and that if the Motion to</p> <p>19 Dismiss is denied in this case, there will be a</p> <p>20 subsequent time when we will depose you regarding</p> <p>21 substantive matters? Were you aware of that?</p> <p>22 A. I am aware to the extent that I understand</p> <p>23 the legal jargon.</p> <p>24 Q. Okay. That's fine. Have you ever been --</p> <p>25 I'm sorry.</p>	<p style="text-align: right;">12</p> <p>1 work is in qui tam work. And some of my cases I know</p> <p>2 for certain are under federal seal. These things come</p> <p>3 in and out from under seal, so I just don't know if</p> <p>4 some of them are still under seal or not under seal.</p> <p>5 So, I think I'd have to err on the side of caution and</p> <p>6 just say I can't give you that list.</p> <p>7 BY MR. JACKSON:</p> <p>8 Q. In how many cases total have you been</p> <p>9 retained?</p> <p>10 A. I don't have an exact number, but if you'd</p> <p>11 like -- would you like a range, an estimate?</p> <p>12 Q. That would be fine.</p> <p>13 A. How about somewhere between 10 and 25?</p> <p>14 Q. And you can't tell me which of those 10 to</p> <p>15 25 cases are presently under seal or not?</p> <p>16 A. Not at this moment.</p> <p>17 Q. How many of those 10 to 25 cases relate to</p> <p>18 the pharmaceutical industry?</p> <p>19 A. All of them.</p> <p>20 Q. How many of those cases are False Claims</p> <p>21 Act cases, whether federal False Claims Act or state</p> <p>22 False Claims Act?</p> <p>23 A. Off the top of my head, and this is an</p> <p>24 estimate, to the best of my recollection all but the</p> <p>25 three that we discussed that I've given depositions</p>

<p>13</p> <p>1 for.</p> <p>2 (Mr. Michael Bolton entered</p> <p>3 the deposition proceedings.)</p> <p>4 BY MR. JACKSON:</p> <p>5 Q. So, all are False Claims Act cases of</p> <p>6 similar ilk?</p> <p>7 A. Except for the --</p> <p>8 Q. The first three you mentioned; the Vioxx,</p> <p>9 the AWP and the civil matter?</p> <p>10 A. Correct.</p> <p>11 MR. KLEIMAN: Excuse me, Mr. Jackson. Can you</p> <p>12 identify who it is that has entered the room and is</p> <p>13 sitting at the table?</p> <p>14 MR. JACKSON: Sure. All the way at the end of</p> <p>15 the table is Michael Bolton, who is a lawyer for</p> <p>16 Baxter.</p> <p>17 MR. KLEIMAN: Thank you.</p> <p>18 BY MR. JACKSON:</p> <p>19 Q. In how many of those cases have you been</p> <p>20 retained by the plaintiffs or relators?</p> <p>21 A. All of them.</p> <p>22 Q. How many of those cases relate or refer to</p> <p>23 pharmaceutical pricing?</p> <p>24 A. I don't have that off the top of my head.</p> <p>25 I don't know.</p>	<p>15</p> <p>1 BY THE WITNESS:</p> <p>2 A. It was in the case of Steinke versus Merck.</p> <p>3 BY MR. JACKSON:</p> <p>4 Q. How much were you paid as a consultant or</p> <p>5 expert in the Steinke case by Mr. Kleiman?</p> <p>6 A. Well, first of all, I don't know if it was</p> <p>7 just -- it wasn't just by Mr. Kleiman. I was retained</p> <p>8 by Mr. Kleiman and Steve Cohen and BethAnne Yeager as</p> <p>9 a group. Actually, I think -- I don't remember which</p> <p>10 group issued the checks. But if you'd like a total of</p> <p>11 how much I made from the entire case?</p> <p>12 Q. Yes, sir.</p> <p>13 A. About 115, 120 thousand dollars.</p> <p>14 Q. And what period of time did your retention</p> <p>15 and work cover in that case?</p> <p>16 A. Again I can just give you an estimate. I</p> <p>17 think it was between 2005 and 2008.</p> <p>18 Q. You mentioned Mr. Cohen, Mr. Kleiman and</p> <p>19 Ms. Yeager in your answer to that. Are they members</p> <p>20 of the same law firm?</p> <p>21 A. I don't think so.</p> <p>22 Q. Were you aware of the fact that those three</p> <p>23 lawyers advertise under a website entitled</p> <p>24 drugfraudsettlement.com?</p> <p>25 A. No, I've never seen that website.</p>
<p>14</p> <p>1 Q. More than half?</p> <p>2 A. Well, pricing's a broad subject. So, in</p> <p>3 the sense that -- you know, in any sense that I can</p> <p>4 assign the word "pricing," I would say, yes, more than</p> <p>5 half.</p> <p>6 Q. How many of those cases relate or involve</p> <p>7 average wholesale price?</p> <p>8 MR. KLEIMAN: Objection. Ambiguous. Are we now</p> <p>9 talking about as the denominator the more than half</p> <p>10 that involve pricing, or is the denominator still the</p> <p>11 universe of false claims cases?</p> <p>12 BY MR. JACKSON:</p> <p>13 Q. You can answer the question.</p> <p>14 A. Well, first of all, I don't have that</p> <p>15 statistic with me. I haven't broken the cases down.</p> <p>16 But again, of all the cases I have and have</p> <p>17 ever worked on, if you're asking what percentage</p> <p>18 are -- have some, if any, touched on AWP, I would</p> <p>19 probably say at least half of them.</p> <p>20 Q. Have you ever been retained by your</p> <p>21 counsel, Mr. Kleiman, before?</p> <p>22 A. Yes, I have.</p> <p>23 Q. In what case was that or cases?</p> <p>24 A. It was in -- help me out. Mark, is that --</p> <p>25 (Discussion off the record.)</p>	<p>16</p> <p>1 (Deposition Exhibit Number 2 was</p> <p>2 marked for identification.)</p> <p>3 (Document tendered to the</p> <p>4 witness.)</p> <p>5 BY MR. JACKSON:</p> <p>6 Q. I'll show you what's been marked as Exhibit</p> <p>7 Number 2. We'll have to have copies made, but Mark,</p> <p>8 this comes from the website.</p> <p>9 Oh, do you have copies?</p> <p>10 Have you ever seen that before?</p> <p>11 A. No, I haven't, not -- I mean, I don't</p> <p>12 believe I've seen this. There was a website --</p> <p>13 MR. KLEIMAN: You've answered the question.</p> <p>14 BY MR. JACKSON:</p> <p>15 Q. You were about to make a comment about a</p> <p>16 website. What was the website you were about to refer</p> <p>17 to?</p> <p>18 A. When the Merck case was settled, this group</p> <p>19 of attorneys put together a website to explain the</p> <p>20 case. And I saw that particular site.</p> <p>21 (Deposition Exhibit Number 3 was</p> <p>22 marked for identification.)</p> <p>23 (Document tendered to the</p> <p>24 witness.)</p> <p>25</p>

<p>17</p> <p>1 BY MR. JACKSON:</p> <p>2 Q. Let me show you what's been marked as</p> <p>3 Deposition Exhibit 3. Deposition Exhibit 3 is a page</p> <p>4 from that same website from which Deposition Exhibit 2</p> <p>5 came. You are identified as the lawyers' drug expert.</p> <p>6 Have you ever seen that document before?</p> <p>7 A. Yes, I have.</p> <p>8 Q. Has Mr. Kleiman or any of the other two</p> <p>9 lawyers identified in Deposition Exhibit 2 retained</p> <p>10 you in connection with any other AWP cases?</p> <p>11 A. Would you define "AWP cases"?</p> <p>12 Q. I'll ask the question has Mr. Kleiman or</p> <p>13 any of the other two lawyers identified in Exhibit 2</p> <p>14 retained you as an expert in connection with any other</p> <p>15 cases in which a pharmaceutical company is a</p> <p>16 defendant?</p> <p>17 A. I don't know.</p> <p>18 Q. You don't know whether you've been retained</p> <p>19 by those lawyers in any other matter?</p> <p>20 A. I don't know if a pharmaceutical company is</p> <p>21 at this time a defendant in a case. In other words, a</p> <p>22 case may or may not have been filed, and I may not</p> <p>23 know whether that case has been filed or not.</p> <p>24 As to whether or not I've been retained, my</p> <p>25 answer is no.</p>	<p>19</p> <p>1 A. No.</p> <p>2 Q. Do any of the other 10 to 25 cases that</p> <p>3 you've identified that you have been retained as a</p> <p>4 consultant or an expert concern Baxter?</p> <p>5 MR. KLEIMAN: To the extent to which any of the</p> <p>6 cases are under seal I'm going to instruct Mr.</p> <p>7 Hamilton not to answer.</p> <p>8 BY THE WITNESS:</p> <p>9 A. There is one case that is not under seal.</p> <p>10 And it is one in which I've been deposed. And that is</p> <p>11 the hepatitis C case in Las Vegas.</p> <p>12 BY MR. JACKSON:</p> <p>13 Q. And that is the third of the cases that you</p> <p>14 mentioned earlier that you'd been deposed on?</p> <p>15 A. Yes, it is.</p> <p>16 Q. And what is the basis for which you're not</p> <p>17 testifying regarding these cases under seal?</p> <p>18 A. Pardon me?</p> <p>19 Q. Why are you not testifying or why are you</p> <p>20 not answering my questions regarding the cases that</p> <p>21 are under seal?</p> <p>22 MR. KLEIMAN: Because I've instructed him not to.</p> <p>23 BY THE WITNESS:</p> <p>24 A. That's a good reason.</p> <p>25 MR. JACKSON: I want to designate this case as</p>
<p>18</p> <p>1 Q. Did any of those lawyers identified in</p> <p>2 Exhibit 2 -- they have not retained you in connection</p> <p>3 with any of the 10 to 25 other cases against the</p> <p>4 pharmaceutical industry that you identified earlier?</p> <p>5 A. That's correct.</p> <p>6 Q. Who were you retained by in the Strong</p> <p>7 versus Merck case?</p> <p>8 A. Craig Steffans.</p> <p>9 Q. What's that case about?</p> <p>10 A. That case concerns the wrongful death of</p> <p>11 Mr. Steffans' client. Are you asking me what his</p> <p>12 claim is?</p> <p>13 Q. Yes.</p> <p>14 A. I believe his claim is called, and again</p> <p>15 I'm not a lawyer, but I think he called it civil</p> <p>16 fraud. And it has to do with the promotion of the</p> <p>17 drug, how the drug is promoted.</p> <p>18 Q. Which drug?</p> <p>19 A. Vioxx.</p> <p>20 Q. Is that the same case that you mentioned</p> <p>21 earlier, the Vioxx case, when I asked you about the</p> <p>22 cases in which you've been deposed?</p> <p>23 A. Yes.</p> <p>24 Q. Same case. Did that Vioxx case concern</p> <p>25 Baxter in any way?</p>	<p>20</p> <p>1 subject to the protective order issued under MDL</p> <p>2 Number 1456, and I will designate this as highly</p> <p>3 confidential.</p> <p>4 BY MR. JACKSON:</p> <p>5 Q. In light of the fact that a protective</p> <p>6 order has been entered in all these cases and this</p> <p>7 deposition is subject to that protective order, will</p> <p>8 you now answer my questions regarding those 10 to 25</p> <p>9 cases under seal?</p> <p>10 MR. KLEIMAN: No.</p> <p>11 BY THE WITNESS:</p> <p>12 A. No.</p> <p>13 BY MR. JACKSON:</p> <p>14 Q. Are you presently a plaintiff in any other</p> <p>15 case other than the case we're discussing today?</p> <p>16 A. No.</p> <p>17 Q. Have you ever before been a plaintiff in a</p> <p>18 lawsuit?</p> <p>19 A. Yes.</p> <p>20 Q. What was the subject matter of that</p> <p>21 lawsuit?</p> <p>22 A. I think I had a small claims case, like, 20</p> <p>23 years ago. I have a vague recollection of that.</p> <p>24 Q. But other than the present case that you're</p> <p>25 being deposed about today, you have not been and are</p>

<p>21</p> <p>1 not now a plaintiff in any other litigation?</p> <p>2 A. I'm really trying to think hard here. I</p> <p>3 had a -- I had a case where I was a plaintiff for a</p> <p>4 period of time in a personal injury case. Again, I</p> <p>5 think that was another -- it might have been a small</p> <p>6 claims case, too. That's it.</p> <p>7 Q. You mentioned the Kentucky AWP case. Did</p> <p>8 any of your testimony in the Kentucky AWP case have</p> <p>9 anything to do with Baxter?</p> <p>10 A. Not that I recall.</p> <p>11 Q. Were you provided any documents in</p> <p>12 connection with that case that concerned or related to</p> <p>13 Baxter?</p> <p>14 A. No.</p> <p>15 Q. And in the Strong versus Merck case, were</p> <p>16 you provided any documents or information in</p> <p>17 connection with that case that related to Baxter?</p> <p>18 A. No.</p> <p>19 Q. And in connection with the 10 to 25 other</p> <p>20 pharmaceutical cases that remain under seal, have you</p> <p>21 been provided any information with regard to any of</p> <p>22 those cases that relate to Baxter?</p> <p>23 A. Not that I recall.</p> <p>24 Q. Mr. Hamilton, when did you first meet</p> <p>25 Linnette Sun?</p>	<p>23</p> <p>1 Q. Your attorney didn't object, so you can</p> <p>2 answer my question.</p> <p>3 MR. KLEIMAN: I want you to exclude from this any</p> <p>4 discussions you have had with me or with Lauren Udden.</p> <p>5 BY THE WITNESS:</p> <p>6 A. That excludes everything.</p> <p>7 BY MR. JACKSON:</p> <p>8 Q. So, by your response do you mean that the</p> <p>9 one to three times you met with Ms. Sun the lawyers</p> <p>10 were always present?</p> <p>11 A. Yes, that is true.</p> <p>12 Q. And by that do you also mean that the</p> <p>13 method or way by which you first met Miss Sun somehow</p> <p>14 involved your lawyers?</p> <p>15 MR. KLEIMAN: You can answer that question to the</p> <p>16 extent it does not involve a communication with me or</p> <p>17 Mr. Udden.</p> <p>18 BY THE WITNESS:</p> <p>19 A. But everything involves communication with</p> <p>20 you and Mr. Udden. So, therefore, I can't answer it.</p> <p>21 BY MR. JACKSON:</p> <p>22 Q. Let me ask it a different way.</p> <p>23 The first time you met Ms. Sun did you</p> <p>24 contact her?</p> <p>25 A. No.</p>
<p>22</p> <p>1 A. I can only estimate that. Probably</p> <p>2 sometime around 2005, sometime around the time we</p> <p>3 filed the Complaint.</p> <p>4 Q. How many times have you met with her in</p> <p>5 person?</p> <p>6 A. I don't have an exact answer, but I would</p> <p>7 say it's somewhere between one and three.</p> <p>8 Q. Has Ms. Sun ever provided you any documents</p> <p>9 or information relating to Baxter?</p> <p>10 A. Nothing that I specifically recall. She</p> <p>11 has provided documents to our attorneys. And I may</p> <p>12 have had -- I may have had access to them, but I don't</p> <p>13 recall ever looking at them.</p> <p>14 Q. Based upon that answer, do you remember</p> <p>15 reviewing any documents in connection -- that you</p> <p>16 might have received from Ms. Sun?</p> <p>17 A. No.</p> <p>18 Q. So, to your knowledge you have not reviewed</p> <p>19 internal documents, internal Baxter documents that</p> <p>20 were provided to you by Ms. Sun?</p> <p>21 A. Correct.</p> <p>22 Q. How did you come to meet Ms. Sun?</p> <p>23 A. I'm going to have to say that's a lawyer</p> <p>24 thing. It has everything to do with my attorneys.</p> <p>25 And so, I think that's all under their privilege.</p>	<p>24</p> <p>1 Q. Did she contact you?</p> <p>2 A. No.</p> <p>3 Q. How about the other two times that you and</p> <p>4 Ms. Sun have met personally; did you initiate the</p> <p>5 communications?</p> <p>6 A. No, I did not.</p> <p>7 Q. Did Ms. Sun initiate the communications?</p> <p>8 A. No, she did not.</p> <p>9 Q. How many times have you and Ms. Sun spoken</p> <p>10 on the telephone?</p> <p>11 A. Absent of attorneys?</p> <p>12 Q. Yes.</p> <p>13 A. Zero.</p> <p>14 Q. And just to make sure I understand your</p> <p>15 answer, you had not met Ms. Sun until sometime in</p> <p>16 2005, is that correct?</p> <p>17 A. Again I would be guessing. It could have</p> <p>18 been 2006 when I -- you say, "met." I assume you mean</p> <p>19 physically?</p> <p>20 Q. Yes, physically met.</p> <p>21 A. That could have been 2006. I don't</p> <p>22 remember.</p> <p>23 Q. Your first communication with Ms. Sun, was</p> <p>24 that in person or by telephone?</p> <p>25 A. Again, any and all communication that I've</p>

<p style="text-align: right;">25</p> <p>1 had with Ms. Sun was with and through the attorneys.</p> <p>2 MR. KLEIMAN: He's not asking you for content.</p> <p>3 He's just asking whether it was in person or by phone.</p> <p>4 That you can answer.</p> <p>5 BY THE WITNESS:</p> <p>6 A. Oh, by phone.</p> <p>7 BY MR. JACKSON:</p> <p>8 Q. And that first contact was around 2005?</p> <p>9 A. Approximately.</p> <p>10 Q. Okay. I'll represent to you, sir, that the</p> <p>11 Amended Complaint in this matter was filed on or about</p> <p>12 June 14, 2005. Using that date as a reference date,</p> <p>13 does that help you date approximately when you and Ms.</p> <p>14 Sun first had a communication?</p> <p>15 A. Not really.</p> <p>16 Q. Do you and Ms. Sun have any agreement to</p> <p>17 share damages, fees or proceeds from this case?</p> <p>18 A. Yes, we do.</p> <p>19 Q. What are the terms of that agreement?</p> <p>20 A. By "terms" could you be more specific?</p> <p>21 Q. Tell me about the agreement between you and</p> <p>22 Ms. Sun regarding the splitting of fees, et cetera.</p> <p>23 A. I can only give you the -- what I remember.</p> <p>24 Q. Okay.</p> <p>25 A. Because, you know, it's legal stuff. So, I</p>	<p style="text-align: right;">27</p> <p>1 A. No, I don't.</p> <p>2 Q. Prior to filing this lawsuit, Mr. Hamilton,</p> <p>3 in April of 2005 did you meet personally with any</p> <p>4 representatives from the Justice Department regarding</p> <p>5 the facts and circumstances of the Complaint?</p> <p>6 A. I don't know. I don't know in terms of the</p> <p>7 dates. At some point in time we did meet with the --</p> <p>8 some folks from the Justice Department. But I don't</p> <p>9 recall if it was -- you know, what the dates were I</p> <p>10 just don't know.</p> <p>11 Q. Who did you meet with?</p> <p>12 A. The one individual I remember was Justin</p> <p>13 Draycott.</p> <p>14 Q. How many times did you meet with Mr.</p> <p>15 Draycott in connection with this case?</p> <p>16 A. Just once, I believe.</p> <p>17 Q. Your Complaint in this matter makes claims</p> <p>18 based upon the law of various other states. Are you</p> <p>19 aware of that?</p> <p>20 A. Vaguely.</p> <p>21 Q. Okay. Prior to filing the Complaint did</p> <p>22 you meet personally with representatives of any of the</p> <p>23 states identified in your Complaint?</p> <p>24 MR. KLEIMAN: Concerning this matter?</p> <p>25 BY MR. JACKSON:</p>
<p style="text-align: right;">26</p> <p>1 don't remember all the conditions and terms.</p> <p>2 Q. That's fine.</p> <p>3 A. The operative one that I remember is that</p> <p>4 we are to split any relators' fees in a ratio of 80</p> <p>5 percent for her and 20 percent for me.</p> <p>6 Q. And how is that ratio determined?</p> <p>7 MR. KLEIMAN: You can testify about that to the</p> <p>8 extent to which you're not revealing communications</p> <p>9 you had with myself or Mr. Udden.</p> <p>10 BY THE WITNESS:</p> <p>11 A. Again that means I can't answer.</p> <p>12 BY MR. JACKSON:</p> <p>13 Q. Is that agreement in writing?</p> <p>14 A. Yes, it is.</p> <p>15 MR. JACKSON: We'd like to get a copy of that</p> <p>16 agreement. We can send you a Document Request, if</p> <p>17 you'd prefer.</p> <p>18 MR. KLEIMAN: I'd prefer.</p> <p>19 BY MR. JACKSON:</p> <p>20 Q. Do you remember any of the other terms of</p> <p>21 that agreement between you and Ms. Sun?</p> <p>22 A. No, I don't.</p> <p>23 Q. Do you have any other agreements in the 10</p> <p>24 to 25 other matters that are under seal to share fees</p> <p>25 with the relators?</p>	<p style="text-align: right;">28</p> <p>1 Q. Concerning this matter.</p> <p>2 A. You know, I don't recall all of who -- you</p> <p>3 know, who we met and when.</p> <p>4 Q. So, is the answer that yes, you did meet</p> <p>5 with certain state representatives or that you did not</p> <p>6 meet?</p> <p>7 A. The answer is I don't recall.</p> <p>8 Q. Okay. Mr. Hamilton, can you briefly</p> <p>9 describe for me your work history?</p> <p>10 A. Sure. I started in the drug industry about</p> <p>11 a year out of undergraduate school.</p> <p>12 Q. What year was that?</p> <p>13 A. Oh, this is painful. In 1973 I went to</p> <p>14 work for Ross Laboratories, which is a division of</p> <p>15 Abbott, as a sales rep. I worked for them in the</p> <p>16 Chicago area for about 11 years.</p> <p>17 Left there, went to work for Schering</p> <p>18 Plough, also in Chicago, also as a sales rep. And</p> <p>19 worked there for about two, two and a half years.</p> <p>20 Left there. I went to Cutter Biological.</p> <p>21 Cutter Biological was a wholly-owned subsidiary of</p> <p>22 Bayer AG or Bayer Company. And I worked for the Bayer</p> <p>23 Company from about '86 until 1999.</p> <p>24 Is that the -- is that what you're looking</p> <p>25 for or do you want --</p>

<p>29</p> <p>1 Q. Sure. Keep going. You're up to 1999.</p> <p>2 A. In '99 I left Bayer and became a</p> <p>3 consultant. I worked at that point for basically two</p> <p>4 companies. One was Bayer Corporation and the other</p> <p>5 one was Express Scripts. Did that for about a year or</p> <p>6 so.</p> <p>7 Then I went to work for Express Scripts,</p> <p>8 and I worked for them from 2001 until 2006.</p> <p>9 From 2006 until today I have been an</p> <p>10 independent consultant.</p> <p>11 (Deposition Exhibit Number 4 was</p> <p>12 marked for identification.)</p> <p>13 (Document tendered to the</p> <p>14 witness.)</p> <p>15 BY MR. JACKSON:</p> <p>16 Q. Let me show you what's been marked as</p> <p>17 Deposition Exhibit 4. Mr. Hamilton, have you ever</p> <p>18 seen Deposition Exhibit 4 before?</p> <p>19 A. I believe I have.</p> <p>20 Q. I'll represent to you, sir, that that is an</p> <p>21 exhibit that came from your deposition in the Kentucky</p> <p>22 matter that you previously described.</p> <p>23 Does that accurately reflect your work</p> <p>24 history?</p> <p>25 A. Reasonably. Some of the dates I believe</p>	<p>31</p> <p>1 Q. When did you first see this document?</p> <p>2 A. I don't recall.</p> <p>3 Q. What is this document?</p> <p>4 A. It appears to be a printout. It's a print</p> <p>5 screen from First DataBank's information on AWP's.</p> <p>6 Q. How do you know this document came from</p> <p>7 First DataBank?</p> <p>8 A. Well, I'm not certain that this document</p> <p>9 came from First DataBank. But I do know that</p> <p>10 documents like this come from First DataBank.</p> <p>11 Q. Okay. You will note at the bottom</p> <p>12 right-hand corner there is a Bates number GH000001</p> <p>13 through GH000009.</p> <p>14 Do you see that?</p> <p>15 A. Yes, I do.</p> <p>16 Q. So, those documents were produced to us by</p> <p>17 you. How did you come to have this document and,</p> <p>18 therefore, produce it to Baxter in this litigation?</p> <p>19 A. If this is a document that I sent to my</p> <p>20 attorneys, which I assume at this point that it is,</p> <p>21 then it means it is a document that I printed off of</p> <p>22 information from First DataBank.</p> <p>23 Q. How was it you were able to print</p> <p>24 information off of First DataBank?</p> <p>25 A. I am a subscriber to First DataBank.</p>
<p>30</p> <p>1 are wrong. But it's -- it's an accurate</p> <p>2 representation.</p> <p>3 Q. Have you ever worked for Baxter or any of</p> <p>4 the -- either of the Baxter entities that are</p> <p>5 identified as defendants in this case?</p> <p>6 A. No, I have not.</p> <p>7 Q. Have you ever consulted with Baxter or</p> <p>8 either of the Baxter entities who are defendants in</p> <p>9 this case?</p> <p>10 MR. KLEIMAN: Objection. Ambiguous.</p> <p>11 BY MR. JACKSON:</p> <p>12 Q. You can answer the question.</p> <p>13 A. I have not been paid as a consultant for</p> <p>14 Baxter.</p> <p>15 (Deposition Exhibit Number 5 was</p> <p>16 marked for identification.)</p> <p>17 (Document tendered to the</p> <p>18 witness.)</p> <p>19 BY MR. JACKSON:</p> <p>20 Q. I show you what's been marked as Deposition</p> <p>21 Exhibit 5. Deposition Exhibit 5 is a document that at</p> <p>22 the top left corner says "Baxter Products W/AWP</p> <p>23 History." And under that it's "04.11.05."</p> <p>24 Have you ever seen this document before?</p> <p>25 A. Yes, I have.</p>	<p>32</p> <p>1 Q. What do you mean by that, "a subscriber to</p> <p>2 First DataBank"?</p> <p>3 A. It means I pay a fee and receive AWP and</p> <p>4 product information from First DataBank.</p> <p>5 Q. When did you first become a subscriber to</p> <p>6 First DataBank and, therefore, have access to this</p> <p>7 information?</p> <p>8 MR. KLEIMAN: Objection. Compound. It assumes</p> <p>9 he didn't have access before he became a subscriber.</p> <p>10 Go ahead and answer.</p> <p>11 BY MR. JACKSON:</p> <p>12 Q. You can answer the question.</p> <p>13 A. I'll break the question up.</p> <p>14 In response to when did I become a</p> <p>15 subscriber, two or three years ago.</p> <p>16 Q. And that is you became a subscriber</p> <p>17 personally versus through some company?</p> <p>18 A. Correct.</p> <p>19 Q. Now, did you have access to First DataBank</p> <p>20 information prior to you personally becoming a</p> <p>21 subscriber?</p> <p>22 A. Yes, I did.</p> <p>23 Q. How did you have that access?</p> <p>24 A. I had it directly and indirectly. I had</p> <p>25 the access to it through Express Scripts.</p>

<p>33</p> <p>1 Q. So, while you were an employee at Express 2 Scripts?</p> <p>3 A. That is correct.</p> <p>4 Q. In that scenario who is the subscriber? Is 5 it Express Scripts or is it Greg Hamilton?</p> <p>6 A. It would be Express Scripts.</p> <p>7 Q. Okay. Now, prior to your time at Express 8 Scripts did you have access to information within the 9 First DataBank database?</p> <p>10 A. No.</p> <p>11 Q. So, based upon your earlier testimony what 12 date do you believe approximately you first gained 13 access to First DataBank information?</p> <p>14 A. Well, let me back up. When you say "first 15 gained access," there's many ways to access a data 16 bank's information, firsthand or secondhand or third.</p> <p>17 I mean, one way is the way I get it now, 18 which is I'm a subscriber.</p> <p>19 Another way would be, like, when I was with 20 Express Scripts and I had access to their subscription 21 to First DataBank.</p> <p>22 Prior to that I had -- again it depends how 23 you define this, but I had access to First DataBank's 24 information through other parties.</p> <p>25 Q. Like whom?</p>	<p>35</p> <p>1 information about AWP with First DataBank.</p> <p>2 Q. Okay. And I believe in your Declaration 3 that you filed in response to our Motion to Dismiss 4 you also identified communications you had with 5 representatives at First DataBank, including Kay 6 Morgan, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And was it -- and it was, I believe from 9 your Declaration, that it was your communication with 10 Kay Morgan that formed the basis of the factual 11 allegations in various paragraphs of the Complaint, 12 correct?</p> <p>13 A. It formed -- it was the basis of some 14 information. It wasn't everything. 15 (Deposition Exhibit Number 6 was 16 marked for identification.) 17 (Document tendered to the 18 witness.)</p> <p>19 BY MR. JACKSON:</p> <p>20 Q. Let me show you what's been marked as 21 Deposition Exhibit 7.</p> <p>22 Mr. Hamilton, I've just handed you 23 Deposition Exhibit 7. Deposition Exhibit 7 is a 24 document entitled -- I'm sorry. That should be 6. 25 Let's make sure we have the right number on that now.</p>
<p>34</p> <p>1 A. Well, like customers.</p> <p>2 Q. Which customers?</p> <p>3 A. I don't recall which ones specifically, but 4 they certainly would have been -- there could have 5 been other manufacturers and GPOs, home care 6 companies. They would all refer to AWP and 7 oftentimes, you know, pull out printouts of their 8 sheets, too, and say, "This is what Red Book's got. 9 This is what First DataBank has," that kind of stuff.</p> <p>10 So, it wasn't that I was a subscriber, but 11 I was presented that data by other people.</p> <p>12 Q. When you received this First DataBank 13 information via third parties, when do you think that 14 process first began?</p> <p>15 A. I would guess somewhere around 1995. I 16 also should note that we're talking about -- we're 17 talking in generalities about information; we're not 18 talking about specifics.</p> <p>19 I also had direct contact with First 20 DataBank when I was with Bayer. I was actually the 21 individual that submitted AWP information to First 22 DataBank. So, I received requests from them along 23 with Medispan and Red Book as to, you know, what AWP 24 information we wanted published for several years. 25 So, I had direct contact back and forth on some</p>	<p>36</p> <p>1 That's actually Deposition Exhibit 6. Thank you.</p> <p>2 Have you seen this Declaration before?</p> <p>3 A. Yes, I have.</p> <p>4 Q. Did you draft this Declaration?</p> <p>5 A. I don't recall.</p> <p>6 Q. Do you remember when you first saw this 7 Declaration?</p> <p>8 A. Exactly, no.</p> <p>9 Q. Did you provide the facts that are 10 contained in this Declaration?</p> <p>11 A. Yes, I did.</p> <p>12 Q. Can I refer you to paragraph 8 of your 13 Declaration? Do you see that?</p> <p>14 A. Yes, I do.</p> <p>15 Q. It says, "In addition to my direct 16 discussions with Baxter managers, I learned of 17 Baxter's pricing and some of the specific acts alleged 18 in paragraphs 36 through 40 of our Complaint while 19 trying to help Kay Morgan, Manager of Editorial 20 Services for First DataBank."</p> <p>21 Do you see that?</p> <p>22 A. Mm-hmm. Yes, I do.</p> <p>23 Q. So, let's go ahead and give you the 24 Complaint. 25</p>

<p>37</p> <p>1 (Deposition Exhibit Number 7 was 2 marked for identification.) 3 (Document tendered to the 4 witness.) 5 BY MR. JACKSON: 6 Q. I show you what's been marked as Deposition 7 Exhibit 7. Do you recognize Deposition Exhibit 7? 8 A. Yes, I do. 9 Q. Can I have you turn to paragraph 36 of the 10 Complaint that is Deposition Exhibit 7? Are you 11 there? 12 A. Yes, I am. 13 Q. It's on page 13 of the Complaint. 14 A. Yes, I am. 15 Q. All right. So, what components of the 16 information contained in paragraph 36 of the Complaint 17 did you receive from Kay Morgan? 18 A. May I mark this document? 19 Q. Certainly. 20 A. (Indicating). 21 Q. Can you read the information in paragraph 22 36 that you gained from your discussion with Ms. 23 Morgan at First DataBank? 24 A. Yes. In paragraph 36, the information that 25 I gained from Kay Morgan is as follows: "Baxter has</p>	<p>39</p> <p>1 pulled up from First DataBank in and around the time 2 the Complaint was filed or sometime earlier? 3 A. I don't recall. 4 Q. Now, the next figure that I see that is new 5 is "Medicare pays 80 percent of that sum, or \$1.235." 6 Do you see that? 7 A. Can you show me again where you're quoting 8 from? 9 Q. Sure, it's the sentence that begins, "Thus, 10 if the AWP for a drug is." 11 Do you see that? It's the end of the 12 fourth line of paragraph 36. 13 A. Yes. 14 Q. You reference there the figure \$1.548. 15 Do you see that? 16 A. Yes. 17 Q. Is that a number that you got from First 18 DataBank, or did you simply calculate that number? 19 A. That number does not come from First 20 DataBank. That is a calculation. 21 Q. In the next sentence, which reads, 22 "Recombinate has been sold to providers for 89 cents 23 (or even less), making the spread, or the difference 24 between the actual acquisition cost of 89 cents and 25 the Medicare payment of \$1.235 equals 0.345."</p>
<p>38</p> <p>1 reported to First DataBank that the WAC for 2 Recombinate is \$1.30 per unit." 3 Q. Is that the only information in paragraph 4 36 that you gained from Kay Morgan? 5 A. Yes, it is. 6 Q. Okay. Did you provide any of the other 7 information in paragraph 36? 8 A. Yes, I did. 9 Q. Which? 10 A. I provided all of the remaining information 11 in that paragraph. 12 Q. So, how did you determine the number 13 \$1.6250? 14 A. I determined that because it was the 15 published AWP for Recombinate. 16 Q. Where did you get that information? 17 A. First DataBank. 18 Q. And when you say you got it from First 19 DataBank, how did you get it from First DataBank? 20 A. I don't recall at the time. I mean, if I 21 want to make it easy for you, I could go home and pull 22 it up right now because First DataBank provides a 23 history of AWP's. 24 Q. So, I'm just trying to understand, sir, was 25 this figure \$1.625, was that information that you</p>	<p>40</p> <p>1 Do you see that? 2 A. Yes, I do. 3 Q. Did you provide the 89-cent sales price 4 there that is reflected in paragraph 36? 5 A. Yes, I did. 6 Q. How did you come to have that data? 7 A. Based on Baxter contracts with Express 8 Scripts. 9 Q. So, that was the price reflected in 10 contracts between Baxter and Express Scripts? 11 A. It was. I can tell you that it was also 12 reflective of prices available to Express Scripts for 13 Baxter product through Cardinal Health. 14 Q. And how do you know that? 15 A. How do I know that? I know that because I 16 had the pharmacy people at Express Scripts pull up the 17 contract price between Express Scripts and Cardinal 18 for Recombinate. And they provided me with that 19 information. 20 Q. When did you do that? 21 A. Somewhere around that time period. I don't 22 remember exactly when. 23 Q. Which time period? About the time the 24 Complaint was filed? 25 A. Yes.</p>

<p>41</p> <p>1 Q. Were you working for Express Scripts at the</p> <p>2 time?</p> <p>3 A. Yes, I was.</p> <p>4 Q. And you -- would you read back his last</p> <p>5 answer?</p> <p>6 (Record read as requested.)</p> <p>7 BY MR. JACKSON:</p> <p>8 Q. So, to make sure I understand your</p> <p>9 testimony, is it your testimony that while you worked</p> <p>10 at Express Scripts you asked someone at Express</p> <p>11 Scripts to contact someone at Cardinal for this</p> <p>12 information?</p> <p>13 A. That is not correct. When I -- would you</p> <p>14 like me to try and explain?</p> <p>15 Q. Yes, please. Would you explain?</p> <p>16 A. Sure. While I was working at Express</p> <p>17 Scripts I was in charge of a program of delivering</p> <p>18 specialty products, hemophilia products, to patients.</p> <p>19 Consequently, I needed to know and did know the prices</p> <p>20 that we at Express Scripts were paying to purchase</p> <p>21 those drugs. And we had several routes to go through,</p> <p>22 channels of distribution in which to buy them.</p> <p>23 One of them was the Cardinal distribution</p> <p>24 system, of which Express Scripts was a participant.</p> <p>25 So, I was aware through my normal business of what the</p>	<p>43</p> <p>1 38 of the Complaint?</p> <p>2 A. No.</p> <p>3 Q. Let me refer you to paragraph 39 of the</p> <p>4 Complaint, which is Deposition Exhibit 7.</p> <p>5 Paragraph 39 begins with the following:</p> <p>6 "According to knowledge obtained by relator Greg</p> <p>7 Hamilton, FDB refused to accept Baxter's 'list sales</p> <p>8 price,' and instead submitted a letter stating that</p> <p>9 their list price was \$1.31 and that they wanted their</p> <p>10 AWP to be described as \$1.31."</p> <p>11 Do you see that?</p> <p>12 A. Yes, I do.</p> <p>13 Q. Did you provide that information to --</p> <p>14 A. Yes, I did.</p> <p>15 Q. And was that information provided to you by</p> <p>16 Kay Morgan?</p> <p>17 A. Yes, it was.</p> <p>18 Q. How is it that you had a conversation with</p> <p>19 Kay Morgan about Baxter?</p> <p>20 A. Kay called me and asked if I had any idea</p> <p>21 why Baxter would be submitting information that they</p> <p>22 knew was in a format that was unacceptable.</p> <p>23 Q. When did this communication take place?</p> <p>24 A. I don't remember exactly. I think it</p> <p>25 was -- I'd have to go back and look at the dates. I</p>
<p>42</p> <p>1 prices were from Cardinal Health for all of the factor</p> <p>2 products.</p> <p>3 Q. All right. Let me have you turn to</p> <p>4 paragraph 37 of Deposition Exhibit 7, the Complaint.</p> <p>5 Is there any information in paragraph 37</p> <p>6 that you gained through your communication with Kay</p> <p>7 Morgan identified in your Declaration?</p> <p>8 A. No.</p> <p>9 Q. Where did that information come from?</p> <p>10 A. That information came from the CMS website.</p> <p>11 Q. Okay. Thank you. Now let me direct your</p> <p>12 attention to paragraph 38.</p> <p>13 I'm sorry. When did you access the CMS</p> <p>14 website to gain the information that's contained in</p> <p>15 paragraph 37?</p> <p>16 A. I don't recall.</p> <p>17 Q. Was it about the time of the date of the</p> <p>18 Complaint?</p> <p>19 A. Again, I don't recall. But if you want me</p> <p>20 to estimate, I would say it was somewhere around that</p> <p>21 time.</p> <p>22 Q. 2005, for example, or 2004?</p> <p>23 A. Again, I would guess 2004 or 2005.</p> <p>24 Q. Okay. Paragraph 38, did you provide any of</p> <p>25 the factual information that's contained in paragraph</p>	<p>44</p> <p>1 just don't remember. But it was -- it was, I believe,</p> <p>2 within days of her having received the letter from</p> <p>3 Baxter.</p> <p>4 Q. Do you know why Kay Morgan called you?</p> <p>5 A. I can only speculate.</p> <p>6 Q. What do you think?</p> <p>7 A. I mean, I don't know.</p> <p>8 Q. She didn't tell you why she was calling</p> <p>9 you?</p> <p>10 MR. KLEIMAN: Calls for speculation.</p> <p>11 Go ahead.</p> <p>12 BY THE WITNESS:</p> <p>13 A. I'm just saying I can -- I can only guess.</p> <p>14 BY MR. JACKSON:</p> <p>15 Q. What's your guess?</p> <p>16 A. My guess is that Kay believed I was a</p> <p>17 knowledgeable person particularly about the plasma</p> <p>18 industry and about the factor industry. Kay and I had</p> <p>19 had several conversations about AWP's, about the</p> <p>20 industry. I was introduced to her by her superiors.</p> <p>21 There was some issue -- Express Scripts is</p> <p>22 a large customer of First DataBank. And I was at a</p> <p>23 meeting with the Chief Operating Officer, Chief</p> <p>24 Financial Officer, some folks like that from First</p> <p>25 DataBank at Express Scripts, and I brought up some</p>

<p style="text-align: right;">45</p> <p>1 issue, I don't know what it was, but I know that three</p> <p>2 or four of us scurried off into a separate conference</p> <p>3 room because they were concerned about it, and they</p> <p>4 picked up the phone and called Kay Morgan.</p> <p>5 And we got on a conference call, and we</p> <p>6 discussed whatever that particular issue was, and they</p> <p>7 asked her to work with me to resolve it.</p> <p>8 From that time forward every so often we</p> <p>9 would talk. I'd call her or she'd call me just about,</p> <p>10 you know, things that were going on in the industry</p> <p>11 and whatever else.</p> <p>12 So, I think that when she received a letter</p> <p>13 as she described from Baxter, that as she described</p> <p>14 it, it said, "We'd like our AWP to be \$1.31 and our</p> <p>15 list price is \$1.31," she was, like, "They know that I</p> <p>16 can't accept AWP's anymore. They know that. I deal</p> <p>17 with Baxter all the time."</p> <p>18 Q. She said that?</p> <p>19 A. Yes. And she said, "I know that they know</p> <p>20 that, and they know I need a WAC, not this list price</p> <p>21 thing. I need a WAC. So, why are they doing this?"</p> <p>22 And she was calling me up, trying to get --</p> <p>23 you know, trying to get an opinion as to why she was</p> <p>24 receiving this type of communication from Baxter.</p> <p>25 Q. So, is all of the factual information</p>	<p style="text-align: right;">47</p> <p>1 Accredo. But it is a specialty pharmacy, otherwise</p> <p>2 known as a home care company, in New Jersey.</p> <p>3 Q. Can I have you turn to the page that is</p> <p>4 marked GH000014 of that exhibit? Do you see those</p> <p>5 handwritten notes in the right-hand margin?</p> <p>6 A. Yes, I do.</p> <p>7 Q. Do you recognize that handwriting?</p> <p>8 A. No, I do not.</p> <p>9 Q. Is it your handwriting?</p> <p>10 A. It is not.</p> <p>11 Q. The format of pages GH14 and 15, the next</p> <p>12 two pages, are different than the format before or</p> <p>13 after. Do you know why?</p> <p>14 A. No.</p> <p>15 Q. Did you make use of this document in</p> <p>16 creating or preparing the allegations of the Complaint</p> <p>17 in this case?</p> <p>18 A. No.</p> <p>19 (Deposition Exhibit Number 9 was</p> <p>20 marked for identification.)</p> <p>21 (Document tendered to the</p> <p>22 witness.)</p> <p>23 BY MR. JACKSON:</p> <p>24 Q. Let me show you what has been marked as</p> <p>25 Deposition Exhibit 9. Deposition Exhibit 9 is a</p>
<p style="text-align: right;">46</p> <p>1 specified in or included in paragraph 39 information</p> <p>2 that you gained from Kay Morgan?</p> <p>3 A. Yes.</p> <p>4 (Deposition Exhibit Number 8 was</p> <p>5 marked for identification.)</p> <p>6 (Document tendered to the</p> <p>7 witness.)</p> <p>8 BY MR. JACKSON:</p> <p>9 Q. I show you what's been marked as Deposition</p> <p>10 Exhibit 8. Deposition Exhibit 8 is a document</p> <p>11 produced to Baxter by you.</p> <p>12 Have you ever seen this document before?</p> <p>13 A. Yes.</p> <p>14 Q. What is this document?</p> <p>15 A. It's financial information about and</p> <p>16 provided by a company called Hemophilia Resources of</p> <p>17 America.</p> <p>18 Q. How did you come to acquire this document?</p> <p>19 A. While I was working at Express Scripts I</p> <p>20 worked on a project that involved Hemophilia Resources</p> <p>21 of America.</p> <p>22 Q. Who is or what is Hemophilia Resources of</p> <p>23 America, Inc.?</p> <p>24 A. Hemophilia Resources of America, Inc. is</p> <p>25 a -- no longer exists as such. It's been purchased by</p>	<p style="text-align: right;">48</p> <p>1 document produced to Baxter by you.</p> <p>2 Have you ever seen this document before?</p> <p>3 A. I'm gonna qualify this by saying -- my</p> <p>4 answer is kind of yes. I guess I'm getting on the</p> <p>5 legal side of this. You know, is this the exact</p> <p>6 document?</p> <p>7 Q. This is the document that you produced to</p> <p>8 us, okay?</p> <p>9 A. Right. Okay. Sure.</p> <p>10 Q. Okay. Now, where did you get this</p> <p>11 document?</p> <p>12 A. This would be while I was at Express</p> <p>13 Scripts. And it was printed off a screen from the --</p> <p>14 at Express Scripts.</p> <p>15 Q. But this was in your possession and</p> <p>16 control, and that's why you produced this?</p> <p>17 A. Yes.</p> <p>18 Q. Now, I presume since it says "Express</p> <p>19 Scripts" at the top, Express Scripts was probably the</p> <p>20 subscriber at the time. Is that your belief?</p> <p>21 A. It is my belief, yes.</p> <p>22 Q. When did you leave Express Scripts?</p> <p>23 A. Summer of 2006.</p> <p>24 Q. Now, was this document, Deposition Exhibit</p> <p>25 9, used in preparing the Complaint in this matter?</p>

<p style="text-align: right;">49</p> <p>1 MR. KLEIMAN: Calls for speculation. 2 You can answer so far as you know. 3 BY THE WITNESS: 4 A. My answer is I don't know. I mean, I don't 5 recall if I used this specific document or not. 6 BY MR. JACKSON: 7 Q. Okay. Did you have any involvement in 8 drafting the Amended Complaint in this matter that is 9 Deposition Exhibit 7? 10 A. By "involvement," if you mean I provided 11 information, then yes. 12 Q. Thus my question about Deposition Exhibit 13 9. Is there new information coming from Deposition 14 Exhibit 9 to your knowledge that was used in drafting 15 the Complaint in this matter to your knowledge? 16 A. Again I don't know. 17 (Deposition Exhibit Number 10 18 was marked for identification.) 19 (Document tendered to the 20 witness.) 21 BY MR. JACKSON: 22 Q. I show you what has been marked as 23 Deposition Exhibit 10. Have you ever seen Deposition 24 Exhibit 10 before? 25 A. Yes, I have.</p>	<p style="text-align: right;">51</p> <p>1 A. This document was used to demonstrate that 2 Baxter did engage in rebate contracts. 3 Q. Okay. Is there anything wrong with 4 engaging in rebate contracts, a pharmaceutical company 5 having rebate contracts? 6 A. Not at all. 7 Q. So, again, how was paragraph 10 used in 8 conjunction with the Complaint, if you know? 9 MR. KLEIMAN: Do you mean Exhibit 10? 10 MR. JACKSON: Yes, I do. I'm sorry. Exhibit 10. 11 BY THE WITNESS: 12 A. Oh, okay. I can only repeat what I just -- 13 my previous answer. It was used to illustrate that 14 Baxter did indeed participate in rebate contracts. 15 I suppose I could go even one step further. 16 It also shows the manner in which Baxter calculated or 17 adjudicated these rebates, and that this was done, 18 obviously, on an Excel spreadsheet. So, this is 19 separate and apart from the standard order entry 20 process, debit and credit inventory system that Baxter 21 would use and, therefore, separate and apart from its 22 Medicaid Administrative Program. 23 Q. You've never worked for Baxter, correct? 24 A. That is correct. 25 Q. So, you don't know how this spreadsheet</p>
<p style="text-align: right;">50</p> <p>1 Q. What is this document? 2 A. This is an Excel spreadsheet provided to me 3 by Baxter when again I was with Express Scripts. 4 If you notice, at the top it says, 5 "Curascript." Curascript is a division of Express 6 Scripts. It's a specialty pharmacy. And this 7 spreadsheet reflects a contract that existed between 8 Baxter and Curascript for the purchase of Baxter 9 products. 10 Q. How is it that -- did you take this 11 document with you when you left Express Scripts or 12 Curascript? 13 A. Well, I had it in my possession. I don't 14 know if that's the same as "took with." 15 Q. Right. Was it your practice to take 16 documents with you when you left an employer? 17 A. It was my practice to work out of my home. 18 Particularly from '04 to '06 working for Express 19 Scripts I worked out of my home. And as such, I had 20 various documents and working materials in my home. 21 This happened to be one of them. 22 Q. Was this document used in providing input 23 to the Complaint in this matter? 24 A. To some extent, yes. 25 Q. How?</p>	<p style="text-align: right;">52</p> <p>1 that is Deposition Exhibit 10 interacts in any way 2 with Baxter's order entry process, do you? 3 A. I know how the industry works. And I don't 4 believe Baxter's order entry process is on an Excel 5 spreadsheet, especially when this Excel spreadsheet 6 was calculated incorrectly and I had to correct it. 7 Q. I'm asking you do you know how -- do you 8 know how Baxter's order entry system works? 9 A. Not specifically, no. 10 Q. And do you know how Baxter's Excel 11 spreadsheet that you identified as Exhibit 10 works 12 with Baxter's order entry system? 13 A. I do not know if it works with it or if 14 it -- how it works with it. I don't even know if it 15 does work with it. 16 Q. You have no knowledge of the internal 17 workings at Baxter vis-à-vis calculations of rebates 18 or pricing, correct? 19 A. That is correct. 20 Let me correct that. When you say 21 "calculations of rebates," do I have any knowledge of 22 how Baxter calculates rebates internally? Well, the 23 fact that as a customer I get my rebate information 24 that comes off an Excel spreadsheet tells me I know 25 something about it in that it's Excel</p>

<p>53</p> <p>1 spreadsheet-driven, and the fact that when I went</p> <p>2 through this and recognized there were mistakes on it</p> <p>3 and went back to the Baxter rep and said, "Hey, you've</p> <p>4 got mistakes," as a matter of fact, they were in</p> <p>5 Curascript's favor, "you've made some errors on here,"</p> <p>6 he responded with, "Oh, yeah. The guy running the</p> <p>7 Excel spreadsheet made a mistake. He moved a field</p> <p>8 over. I'll have him correct it," that tells me</p> <p>9 something about how they're adjudicating their</p> <p>10 rebates.</p> <p>11 Q. When you say "adjudicating rebates," what</p> <p>12 do you mean by that?</p> <p>13 A. Well, calculating them. As you can see, in</p> <p>14 this particular situation different rebate tiers were</p> <p>15 set up. If the customer purchases a certain amount of</p> <p>16 product, they get a certain rebate. And if they hit a</p> <p>17 certain goal, they get this rebate. This is set up</p> <p>18 prior to sales.</p> <p>19 And then after the sales period, whether it</p> <p>20 be a quarter or a year, Baxter sits down and looks at</p> <p>21 what those sales were, compares them to the -- you</p> <p>22 know, what was offered, and then calculates what</p> <p>23 rebate is due and issues a check.</p> <p>24 Q. Is there anything wrong with that process</p> <p>25 in your mind?</p>	<p>55</p> <p>1 MR. KLEIMAN: Calls for speculation.</p> <p>2 BY THE WITNESS:</p> <p>3 A. No, I don't.</p> <p>4 BY MR. JACKSON:</p> <p>5 Q. If you go further into the document, go</p> <p>6 back to page GH000064, at the top there's also a fax</p> <p>7 mark, it appears, and it says, "Patient Services,</p> <p>8 Inc."</p> <p>9 Do you know who Patient Services, Inc. is?</p> <p>10 A. Yes, I do.</p> <p>11 Q. Who are they?</p> <p>12 A. Patient Services, Inc. is a non-profit</p> <p>13 organization in Virginia.</p> <p>14 Q. And what do they do?</p> <p>15 A. They assist patients in reimbursement</p> <p>16 issues.</p> <p>17 Q. Did you receive this document from Patient</p> <p>18 Services, Inc.?</p> <p>19 A. I don't recall.</p> <p>20 Q. I'm sorry if you answered this question.</p> <p>21 When did you first see this document?</p> <p>22 A. I don't recall. I did answer that. I just</p> <p>23 don't remember.</p> <p>24 Q. Did this document have any bearing or did</p> <p>25 you use this document in any way to draft the</p>
<p>54</p> <p>1 A. Nothing at all.</p> <p>2 (Deposition Exhibit Number 11 was</p> <p>3 marked for identification.)</p> <p>4 (Document tendered to the</p> <p>5 witness.)</p> <p>6 BY MR. JACKSON:</p> <p>7 Q. Let me show you what has been marked as</p> <p>8 Deposition Exhibit 11. Deposition Exhibit 11 is a</p> <p>9 document produced by you to us. At the top it says,</p> <p>10 "RBC Capital Markets." It's an article entitled, "The</p> <p>11 Changing Paradigm In Hemophilia."</p> <p>12 Do you see that?</p> <p>13 A. Yes, I do.</p> <p>14 Q. Have you seen this document before?</p> <p>15 A. Yes, I have.</p> <p>16 Q. When did you first see this document?</p> <p>17 A. I don't know.</p> <p>18 Q. At the top there is what appears to be a</p> <p>19 fax number. It says, "Algonquin."</p> <p>20 Do you know what that is?</p> <p>21 A. No, I don't.</p> <p>22 Q. Do you have a fax number 847-960-7384?</p> <p>23 A. No, I don't.</p> <p>24 Q. Do you know how that mark got on the top of</p> <p>25 this document that you produced to us?</p>	<p>56</p> <p>1 Complaint?</p> <p>2 A. Again I don't recall.</p> <p>3 Q. Why did you produce this document to us?</p> <p>4 Do you recall?</p> <p>5 A. I don't know why it was produced to you.</p> <p>6 My best guess is I provided this to my attorneys as</p> <p>7 background information about the hemophilia market.</p> <p>8 Q. If you refer back to the front page of this</p> <p>9 document, there are certain clauses, et cetera, that</p> <p>10 are underlined.</p> <p>11 Are those your markings?</p> <p>12 A. I don't know.</p> <p>13 (Deposition Exhibit Number 12 was</p> <p>14 marked for identification.)</p> <p>15 (Document tendered to the</p> <p>16 witness.)</p> <p>17 BY MR. JACKSON:</p> <p>18 Q. Let me show you what's been marked as</p> <p>19 Deposition Exhibit 12. Deposition Exhibit 12 is a</p> <p>20 news article produced by you to Baxter in this matter.</p> <p>21 It's a U.S. News article dated April 2, 2003. It's</p> <p>22 entitled "Court: HMOs Can Be Made to Open Networks."</p> <p>23 Do you see that?</p> <p>24 A. Yes, I do.</p> <p>25 Q. Have you ever seen this document before?</p>

<p>57</p> <p>1 A. I don't recall it.</p> <p>2 Q. Do you know what relevance this document</p> <p>3 has to the Complaint in this matter?</p> <p>4 A. I would need to read it. Do you want me to</p> <p>5 take a minute and read it?</p> <p>6 Q. Well, I'm just curious have you read it</p> <p>7 before?</p> <p>8 A. Again I don't recall.</p> <p>9 Q. Do you remember referring to this when you</p> <p>10 provided input for the Complaint in this matter?</p> <p>11 A. I do not recall that.</p> <p>12 (Deposition Exhibit Number 13 was</p> <p>13 marked for identification.)</p> <p>14 (Document tendered to the</p> <p>15 witness.)</p> <p>16 BY MR. JACKSON:</p> <p>17 Q. Sir, I'm handing you Deposition Exhibit 13.</p> <p>18 Deposition Exhibit 13 is a Confidential Examination</p> <p>19 Under Oath of Patricia Kay Morgan dated January 28,</p> <p>20 2002. This document has Bates numbers GH000126</p> <p>21 through GH000290.</p> <p>22 Have you ever seen this document before?</p> <p>23 A. I think so.</p> <p>24 Q. Under what circumstances have you seen this</p> <p>25 document?</p>	<p>59</p> <p>1 BY MR. JACKSON:</p> <p>2 Q. I show you what's been marked Deposition</p> <p>3 Exhibit 14. Deposition Exhibit 14 is a State of Texas</p> <p>4 Notice of Intention to Take Oral Depositions. It's</p> <p>5 Exhibit 371 to the deposition of Kay Morgan. This</p> <p>6 document was produced to us by you in this matter.</p> <p>7 Have you ever seen this document before?</p> <p>8 A. I don't believe so. I'm looking at it now,</p> <p>9 but I don't recall ever seeing this before.</p> <p>10 Q. Do you recall reviewing this document in</p> <p>11 preparation of providing input for the Complaint in</p> <p>12 this matter?</p> <p>13 A. No, I do not recall that.</p> <p>14 Q. Let me have you turn to page GH000113 of</p> <p>15 that exhibit, please. There are markings on that</p> <p>16 page. Some text has been underlined.</p> <p>17 Do you see that?</p> <p>18 A. Yes, I do.</p> <p>19 Q. Is that your underlining?</p> <p>20 A. I don't believe so, but I don't know.</p> <p>21 (Deposition Exhibit Number 15 was</p> <p>22 marked for identification.)</p> <p>23 (Document tendered to the</p> <p>24 witness.)</p> <p>25</p>
<p>58</p> <p>1 A. I think I may have a copy of it.</p> <p>2 Q. You'll note this document is identified as</p> <p>3 "Attorneys' Eyes Only."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. When did you first see this document?</p> <p>7 A. I have no idea.</p> <p>8 Q. How did you get this document?</p> <p>9 A. From my attorney.</p> <p>10 Q. Is there anything to your knowledge in this</p> <p>11 deposition that relates to Baxter?</p> <p>12 A. I don't know.</p> <p>13 Q. And I'm sorry, sir. You said you have or</p> <p>14 have not read this document?</p> <p>15 A. I don't know.</p> <p>16 Q. Did any information in this document</p> <p>17 have -- strike that.</p> <p>18 Did you use any information coming from</p> <p>19 this examination; that is, Deposition Exhibit 13, in</p> <p>20 preparing or drafting the Complaint?</p> <p>21 A. No.</p> <p>22 (Deposition Exhibit Number 14 was</p> <p>23 marked for identification.)</p> <p>24 (Document tendered to the</p> <p>25 witness.)</p>	<p>60</p> <p>1 BY MR. JACKSON:</p> <p>2 Q. Let me show you what's been marked as</p> <p>3 Deposition Exhibit 15. Deposition Exhibit 15 is a</p> <p>4 document entitled "Deposition Summary Patricia Kay</p> <p>5 Morgan Taken 11/13/02."</p> <p>6 Do you see that document?</p> <p>7 A. Yes, I do.</p> <p>8 Q. Have you ever seen this document before?</p> <p>9 A. Yes, I believe I have.</p> <p>10 Q. When did you first see this document?</p> <p>11 A. No idea.</p> <p>12 Q. Were you given -- how did you acquire a</p> <p>13 copy of this document?</p> <p>14 A. It would have had to have been through my</p> <p>15 attorneys.</p> <p>16 Q. Did you draft this summary or this</p> <p>17 deposition summary?</p> <p>18 A. No.</p> <p>19 Q. When were you provided this document?</p> <p>20 A. I have no clue.</p> <p>21 Q. Do you remember whether you were provided</p> <p>22 this document prior to the date that the Complaint was</p> <p>23 filed in this case?</p> <p>24 A. Again I don't know.</p> <p>25 Q. Mr. Hamilton, have you signed up to the</p>

<p>61</p> <p>1 terms of a protective order relating to the Texas</p> <p>2 depositions, particularly as relates to Kay Morgan's</p> <p>3 deposition?</p> <p>4 A. I don't know.</p> <p>5 Q. Again I find no mention of Baxter in this</p> <p>6 document. Did this document have -- did you review it</p> <p>7 before drafting the Complaint in this matter?</p> <p>8 A. The document you're talking about here is</p> <p>9 this Exhibit 15?</p> <p>10 Q. Yes, sir.</p> <p>11 A. I don't even remember, you know, when I saw</p> <p>12 it and when I've looked at it. So, I would have to</p> <p>13 tell you that it had nothing to do with me drafting</p> <p>14 the Complaint.</p> <p>15 Q. Okay. I apologize for doing this.</p> <p>16 A. To the tree.</p> <p>17 Q. To the trees.</p> <p>18 (Deposition Exhibit Number 16 was</p> <p>19 marked for identification.)</p> <p>20 (Document tendered to the</p> <p>21 witness.)</p> <p>22 BY MR. JACKSON:</p> <p>23 Q. I'm handing you what has been marked as</p> <p>24 Deposition Exhibit 16.</p> <p>25 MR. KLEIMAN: Let the record reflect we're</p>	<p>63</p> <p>1 BY MR. JACKSON:</p> <p>2 Q. This was a single document produced to us</p> <p>3 by you, sir.</p> <p>4 A. I mean, I'm looking -- just so you know,</p> <p>5 I'm looking at the Table of Contents on this, and it</p> <p>6 says it goes up to page 85. There's gotta be 500</p> <p>7 pages here.</p> <p>8 Q. I understand.</p> <p>9 A. So, I'm saying I don't know what all is in</p> <p>10 here.</p> <p>11 Q. Again, Mr. Hamilton, this is a single file</p> <p>12 that was produced to us by you. And I'm just trying</p> <p>13 to understand what this document is.</p> <p>14 A. Okay.</p> <p>15 Q. So, let's focus on --</p> <p>16 A. I'm trying to do the same thing, by the</p> <p>17 way.</p> <p>18 Q. Sure.</p> <p>19 A. I'm trying to figure out what this</p> <p>20 document -- I mean, I'm very familiar with the Market</p> <p>21 Research Bureau reports, okay?</p> <p>22 Q. Let's start there. What is the Market</p> <p>23 Research Bureau? What is it?</p> <p>24 A. Market Research Bureau is a company owned</p> <p>25 and operated by a man named Patrick Robert. Patrick</p>
<p>62</p> <p>1 grunting and groaning.</p> <p>2 BY MR. JACKSON:</p> <p>3 Q. Deposition Exhibit 16 is a document</p> <p>4 entitled "Survey on Hemophilia Care & Price Monitoring</p> <p>5 in the United States." The front cover of this</p> <p>6 exhibit is called "Global Market Research Hemophilia."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Have you ever seen this document before?</p> <p>10 A. I -- just by the size of it I'd say no, but</p> <p>11 I don't know. Let me take a look and see what it says</p> <p>12 inside.</p> <p>13 Oh, this is a Market Research Bureau</p> <p>14 report. Sure. I don't remember it being this big.</p> <p>15 Q. When do you think you first saw this</p> <p>16 document?</p> <p>17 A. Oh, well, when you say "this document," are</p> <p>18 you referring to, you know, what is titled "Wave 10,</p> <p>19 April 2000" or are you talking about a Market Research</p> <p>20 Bureau report of this nature?</p> <p>21 Q. I'm talking specifically about this</p> <p>22 document that is identified as GH000321 through</p> <p>23 GH001495.</p> <p>24 MR. KLEIMAN: I'm going to object as ambiguous.</p> <p>25 This contains multiple documents.</p>	<p>64</p> <p>1 is a former colleague of mine from Bayer Corporation.</p> <p>2 He was in the Marketing Research Department. He left</p> <p>3 Bayer.</p> <p>4 I forget what year he started this thing,</p> <p>5 but he started his own company of market research to</p> <p>6 provide information and data and research in an</p> <p>7 area -- what's called an unaudited market, which, if</p> <p>8 you're familiar with the plasma products at all, they</p> <p>9 are what's called unaudited.</p> <p>10 And if you look at the pills and tablets</p> <p>11 side of the pharmaceutical industry, IMS does a great</p> <p>12 job of telling everybody -- IMS Health, an</p> <p>13 organization, does a great job of providing data to</p> <p>14 the industry about, you know, what categories of drugs</p> <p>15 were sold, how many were sold, you know, AWP's, all</p> <p>16 that stuff. And they provide all this sales</p> <p>17 information by zip code. They even provide stuff by</p> <p>18 doctor.</p> <p>19 The biologics world doesn't have that type</p> <p>20 of a service. And so, because that information was</p> <p>21 missing, Patrick went out and founded his own company</p> <p>22 to provide that information to those people in this</p> <p>23 industry so they would have marketing information and</p> <p>24 data they could use for all their products. And</p> <p>25 that's what he did.</p>

<p>65</p> <p>1 Q. Do you remember citing to the Market 2 Research Bureau in your Complaint?</p> <p>3 A. I don't specifically recall, but I believe 4 it's in there.</p> <p>5 Q. Did you recently call the Market Research 6 Bureau in connection with this matter?</p> <p>7 A. Yes, I did.</p> <p>8 Q. Why did you call the Market Research 9 Bureau?</p> <p>10 A. I called Patrick Robert because I wanted to 11 find out, get some information from him.</p> <p>12 Do you want to know what information I was 13 calling him for?</p> <p>14 Q. I do.</p> <p>15 A. I wanted to find out what he would charge 16 for some old reports and, you know, what he was 17 currently charging for reports. Let me think what 18 else I asked him.</p> <p>19 I think I just confirmed with him it was -- 20 I talked to both his assistant and to Patrick. I just 21 confirmed that their number of clients was small 22 scale.</p> <p>23 Q. Can I have you look back at your 24 Declaration, please?</p> <p>25 A. Can you tell me what number that is?</p>	<p>67</p> <p>1 we wanted to buy the current report. And the rest of 2 that information that's in paragraph 14 were her 3 answers to my questions.</p> <p>4 Q. Okay. So, is it -- was it her answer that 5 there are presently 20 subscribers to Market Research 6 Bureau reports?</p> <p>7 A. Yes.</p> <p>8 Q. Did you ask her any questions about 9 previous or prior year Market Research Bureau reports?</p> <p>10 A. I asked her if they would be available.</p> <p>11 She said yes.</p> <p>12 I asked her, you know, about how much those 13 would cost, and she said, "You'll need to talk to 14 Patrick, and Patrick's out of the country at the 15 moment."</p> <p>16 Q. But your Declaration says that she told you 17 how much things would cost.</p> <p>18 A. She told me how much a single issue was.</p> <p>19 Q. That's today's issue?</p> <p>20 A. That's today's issue.</p> <p>21 Q. Not prior issues?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And did you ask her what her 24 subscribers were or what Market Research Bureau's 25 subscribers were in years past?</p>
<p>66</p> <p>1 MR. KLEIMAN: It's 6. 2 THE WITNESS: Okay. 3 BY MR. JACKSON:</p> <p>4 Q. Can I refer you to paragraph 14?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. In paragraph 14 you specify -- of 7 your Declaration you specify "On September 13, 2009 I 8 called the Market Research Bureau and spoke with Cindy 9 Lynn, Patrick Robert's secretary."</p> <p>10 Did you just speak with Cindy Lynn, or did 11 you speak with Mr. Robert?</p> <p>12 A. On September 13th I spoke with Cindy Lynn. 13 Subsequently Patrick called me back. I don't know how 14 many days later it was, but at some point he called 15 back and we had further discussions about it.</p> <p>16 Q. All right. So, let's talk about your 17 conversation with Cindy Lynn.</p> <p>18 What did you ask her?</p> <p>19 A. I asked her questions that generated these 20 answers. So, like I said just a minute ago off the 21 top of my head that I had called and I wanted to find 22 out what a subscription to this would cost.</p> <p>23 Q. So, is the subscription that you refer to 24 in paragraph 14 of your Declaration today's prices?</p> <p>25 A. Yes. That was the price she quoted me if</p>	<p>68</p> <p>1 A. I'm not sure I understand your question.</p> <p>2 Q. Sure. I thought you testified earlier that 3 the \$16,000 price and the 20 subscribers referred to 4 present day data?</p> <p>5 A. That's correct.</p> <p>6 Q. So, my question to you, sir, is did you 7 also ask her about costs in 2002, for example, of 8 reports?</p> <p>9 A. No, I did not.</p> <p>10 Q. Or did you ask her about the number of 11 subscribers in 2002?</p> <p>12 A. No, I did not.</p> <p>13 Q. Now, let me refer you back to the Market 14 Research Bureau exhibit that is Exhibit 16.</p> <p>15 A. Can I put this away?</p> <p>16 Q. You probably ought to leave it right there.</p> <p>17 A. Okay.</p> <p>18 Q. You're referring back to -- can I have you 19 look to page GH000323?</p> <p>20 Actually, maybe I'll make this easier. If 21 you pull out Deposition Exhibit 7, which is your 22 Complaint in this case, --</p> <p>23 A. Got it.</p> <p>24 Q. -- paragraph 29 refers to a 2001 Market 25 Research Bureau report called "The Plasma Fractions</p>

<p>69</p> <p>1 Market in the United States."</p> <p>2 Do you see that?</p> <p>3 A. Yes, I do.</p> <p>4 Q. Did you make use of a 2001 Market Research</p> <p>5 Bureau report in preparing your Complaint?</p> <p>6 A. Yes. I might add I probably used several</p> <p>7 years of the Market Research Bureau reports. I don't</p> <p>8 know exactly what years I've got at home, but --</p> <p>9 (Deposition Exhibit Number 17 was</p> <p>10 marked for identification.)</p> <p>11 (Document tendered to the</p> <p>12 witness.)</p> <p>13 BY MR. JACKSON:</p> <p>14 Q. Let me show you what has been marked as</p> <p>15 Deposition Exhibit 17. Deposition Exhibit 17 is a</p> <p>16 2001 Market Research Bureau report.</p> <p>17 Do you see that?</p> <p>18 A. Yes, I do.</p> <p>19 Q. Is that the report that you referred to in</p> <p>20 your Complaint?</p> <p>21 A. Yes, it is.</p> <p>22 Q. And I believe you also testified that you</p> <p>23 may have reviewed other Market Research Bureau reports</p> <p>24 in preparing the Complaint?</p> <p>25 A. Yes.</p>	<p>71</p> <p>1 Do you see that?</p> <p>2 A. Yes, I do.</p> <p>3 Q. So, is it your understanding that Market</p> <p>4 Research Bureau takes public information, recompiles</p> <p>5 it and uses that to create their report?</p> <p>6 A. No.</p> <p>7 Q. Isn't that what it says?</p> <p>8 A. It says, "analysis of information generally</p> <p>9 available to the public or released by responsible</p> <p>10 individuals in the companies mentioned."</p> <p>11 And I believe, if I had to put a number on</p> <p>12 it, probably 95 percent of the information contained</p> <p>13 in the Market Research Bureau is not available to the</p> <p>14 public. It is this latter part "released by</p> <p>15 responsible individuals in the companies mentioned."</p> <p>16 Q. But doesn't it --</p> <p>17 A. If it was available to the public, you</p> <p>18 wouldn't need the report.</p> <p>19 Q. Couldn't it be that they are simply taking</p> <p>20 public information from a variety of sources and</p> <p>21 compiling it, putting it together to resell to the</p> <p>22 general market?</p> <p>23 A. In this case, no, because let's remember</p> <p>24 that the reason he formed this company was because</p> <p>25 that information isn't available.</p>
<p>70</p> <p>1 Q. Would that include the Market Research</p> <p>2 Bureau document that is Deposition Exhibit 16?</p> <p>3 A. It could.</p> <p>4 Q. You don't remember?</p> <p>5 A. I don't remember specifically which ones.</p> <p>6 I mean, this one is dated April 2002 and the Market</p> <p>7 Research Bureau reports typically provide historical</p> <p>8 data, too. So, at this moment exactly which piece of</p> <p>9 information I pulled from which report I don't know.</p> <p>10 Q. Did you --</p> <p>11 A. But I can also -- let me offer you</p> <p>12 something here.</p> <p>13 No, never mind. Go ahead.</p> <p>14 Q. How did you obtain Deposition Exhibits 16</p> <p>15 and 17?</p> <p>16 A. I'm not sure.</p> <p>17 Q. Did Miss Sun give these to you?</p> <p>18 A. No.</p> <p>19 Q. If you look at the front page of Deposition</p> <p>20 Exhibit 17, which is "The Plasma Fractions Market in</p> <p>21 the United States 2001," it includes the following:</p> <p>22 "The contents of this study represent our analysis of</p> <p>23 information generally available to the public or</p> <p>24 released by responsible individuals in the companies</p> <p>25 mentioned."</p>	<p>72</p> <p>1 Q. Do you also see in that initial disclosure</p> <p>2 the second sentence, "It does not contain information</p> <p>3 provided in confidence by our clients"?</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Now, how much of any of these Market</p> <p>7 Research Bureau reports did you rely upon in preparing</p> <p>8 the factual information contained in the Complaint?</p> <p>9 A. I don't know.</p> <p>10 (Deposition Exhibit Number 18 was</p> <p>11 marked for identification.)</p> <p>12 (Document tendered to the</p> <p>13 witness.)</p> <p>14 BY MR. JACKSON:</p> <p>15 Q. Let me show you what's been marked as</p> <p>16 Deposition Exhibit 18.</p> <p>17 A. I was going to say, if we're getting near a</p> <p>18 point, I'd like to take a bathroom break when we get a</p> <p>19 chance.</p> <p>20 MR. JACKSON: Sure. Let's do that right now.</p> <p>21 (Recess.)</p> <p>22 BY MR. JACKSON:</p> <p>23 Q. Mr. Hamilton, let me show you what's been</p> <p>24 marked as Deposition Exhibit 18.</p> <p>25 Have you ever seen Deposition Exhibit 18</p>

<p>73</p> <p>1 before?</p> <p>2 A. I think so.</p> <p>3 Q. Can you explain to me what Deposition</p> <p>4 Exhibit 18 is?</p> <p>5 A. Well, I can take my best guess.</p> <p>6 Q. Okay.</p> <p>7 A. I mean, obviously it's a -- you know, the</p> <p>8 title is "Summary of First DataBank Information on</p> <p>9 Selected Drugs." And I believe what the --</p> <p>10 Q. Did you create this document?</p> <p>11 A. I personally didn't, but I may have</p> <p>12 directed someone to create it.</p> <p>13 Q. And what was the purpose of creating this</p> <p>14 document?</p> <p>15 A. Again if it's the document I'm thinking of,</p> <p>16 you know, because this is a little bit out of context,</p> <p>17 but as best I can guess, this looks like a comparison</p> <p>18 sheet that I would have used -- let me try and put it</p> <p>19 in context and explain.</p> <p>20 When I was with Express Scripts, so this is</p> <p>21 when I was a customer of Baxter's and all the other</p> <p>22 factor manufacturers, I was responsible for</p> <p>23 contracting with various health plans for fulfillment</p> <p>24 of specialty prescriptions.</p> <p>25 And one of the things that I did in the</p>	<p>75</p> <p>1 or two years and the AWP changed three times in that</p> <p>2 period, that could have severe financial implications</p> <p>3 on either party that's in the contract.</p> <p>4 So, I believe this is a document that was</p> <p>5 one of those produced just to show people the changes</p> <p>6 in AWP.</p> <p>7 Q. So, do you believe you created this</p> <p>8 document or had it created while you were at Express</p> <p>9 Scripts?</p> <p>10 A. It looks like something that I would have</p> <p>11 had done while I was at Express Scripts.</p> <p>12 Q. Did you rely upon or use this document in</p> <p>13 preparing the Complaint in this matter?</p> <p>14 A. Not per se.</p> <p>15 Q. When you say "per se," that's a qualifier.</p> <p>16 A. Yeah, it is. Not specifically. I think</p> <p>17 that one -- and I don't know how well it's spelled out</p> <p>18 in the Complaint, but one of the issues with AWP, and</p> <p>19 I assume you're unbelievably familiar with AWP at this</p> <p>20 point, is that both prior to 2001 and after 2001 AWP's</p> <p>21 could be changed in this industry sort of willy-nilly</p> <p>22 at the manufacturer's whim depending on market</p> <p>23 circumstances, whatever they wanted to do. It was</p> <p>24 very easy to initiate a change in AWP, and you could</p> <p>25 make it whatever you wanted.</p>
<p>74</p> <p>1 contracting process was to -- you know, we -- we sold</p> <p>2 the product at prices -- we billed the customer at</p> <p>3 some discount off of AWP.</p> <p>4 Q. Who billed it?</p> <p>5 A. Express Scripts, or Curascript, a</p> <p>6 subdivision of it. So, we would bill some discount</p> <p>7 off of AWP.</p> <p>8 And, of course, we would footnote that the</p> <p>9 AWP we used was that of First DataBank because there</p> <p>10 are two other data banks you could be using. So, you</p> <p>11 wanted to specify, especially under a contract, which</p> <p>12 data bank you're using.</p> <p>13 And I also would add to the contracts, to</p> <p>14 the footnotes, that if the AWP should change during</p> <p>15 the contract period, that we reserved the right to</p> <p>16 also change the rate, what we were charging. And in</p> <p>17 some circumstances I put together or had other people</p> <p>18 for me put together things like this to show internal</p> <p>19 customers and the people within Express Scripts what</p> <p>20 was going on, and also people outside of Express</p> <p>21 Scripts, the reason and the need for having that kind</p> <p>22 of language in a contract because of the changes in</p> <p>23 AWP that exist in the marketplace.</p> <p>24 So, you wouldn't -- you know, if you looked</p> <p>25 into a particular AWP minus such-and-such for a year</p>	<p>76</p> <p>1 And because of that, it was necessary for</p> <p>2 me in a contracting position to make sure that I</p> <p>3 noted, hey, AWP's changed. And I would say that --</p> <p>4 again, I'm telling a customer I'm putting this</p> <p>5 footnote in because they do change and they don't</p> <p>6 necessarily make any sense when they change and they</p> <p>7 may or may not affect the actual acquisition price.</p> <p>8 Oftentimes they don't. It's just the AWP changes.</p> <p>9 So, this was done, I think, more as an educational</p> <p>10 piece to explain why.</p> <p>11 So, when you say was it relied upon, I</p> <p>12 don't believe specifically, but the idea or the</p> <p>13 concept is certainly part of it, is that AWP's, you</p> <p>14 know, fluctuated with sort of the wind or, you know,</p> <p>15 whatever a manufacturer felt they needed at that given</p> <p>16 point in time.</p> <p>17 Q. So, why is that -- I'm sorry.</p> <p>18 Is that document then relevant to the</p> <p>19 allegations of the Complaint in this case?</p> <p>20 A. Again I'm saying it's not necessary to the</p> <p>21 Complaint.</p> <p>22 Q. Was it used to make any allegations in the</p> <p>23 Complaint?</p> <p>24 A. I don't believe so. I hope -- Mark's</p> <p>25 probably looking at me like, oh, just be quiet, but</p>

<p style="text-align: right;">77</p> <p>1 I'm trying to give you as much information, you know,</p> <p>2 to make this easy for all of us to understand.</p> <p>3 Q. I appreciate that.</p> <p>4 A. So, if I talk too much, just tell me to</p> <p>5 shut up.</p> <p>6 MR. KLEIMAN: How about you? Do I get to tell</p> <p>7 you?</p> <p>8 THE WITNESS: You don't get to tell me.</p> <p>9 (Deposition Exhibit Number 19 was</p> <p>10 marked for identification.)</p> <p>11 (Document tendered to the</p> <p>12 witness.)</p> <p>13 BY MR. JACKSON:</p> <p>14 Q. All right. Mr. Hamilton, I want to show</p> <p>15 you what's been marked as Deposition Exhibit 19.</p> <p>16 Deposition Exhibit 19 is a document produced to Baxter</p> <p>17 by you.</p> <p>18 Have you ever seen this document before?</p> <p>19 A. Yes, I have.</p> <p>20 Q. Can you explain what this collection of</p> <p>21 pages are?</p> <p>22 A. Yeah. These are photocopies of my</p> <p>23 appointment books going back through the years.</p> <p>24 Q. Okay. How far back do you have appointment</p> <p>25 books?</p>	<p style="text-align: right;">79</p> <p>1 notes or comments or marks.</p> <p>2 A. It looks like it says, "Plus?"</p> <p>3 Oh, you want me to try to interpret that</p> <p>4 for you in Greg hieroglyphics?</p> <p>5 Q. I would.</p> <p>6 A. That probably means meeting with Baxter,</p> <p>7 Royal and possibly somebody else.</p> <p>8 Q. Okay. And where were you meeting with</p> <p>9 Royal on January 24th, 2005?</p> <p>10 A. I don't know.</p> <p>11 Q. Did you meet with them then?</p> <p>12 A. I can't say for certain. Typically if</p> <p>13 there's something like this in my appointment book and</p> <p>14 the appointment is cancelled, it will be scratched</p> <p>15 out. So, I would say I probably did.</p> <p>16 Q. Do you remember what the subject of your</p> <p>17 meeting was at that time?</p> <p>18 A. No.</p> <p>19 Q. All right. Let's go to the next page,</p> <p>20 GH001498.</p> <p>21 Do you see that?</p> <p>22 A. Mm-hmm.</p> <p>23 Q. There is on that page what appears to be</p> <p>24 the name "Royal Stuart."</p> <p>25 Do you see that?</p>
<p style="text-align: right;">78</p> <p>1 A. I'm not sure exactly, but I'd say probably</p> <p>2 1993.</p> <p>3 Q. Do you still have these original documents?</p> <p>4 A. Yes.</p> <p>5 Q. In your possession or in your counsel's</p> <p>6 possession?</p> <p>7 A. In my possession.</p> <p>8 Well, let me -- when you say "original</p> <p>9 documents," I have the actual appointment books in my</p> <p>10 possession. I made photocopies of all these pages and</p> <p>11 sent them to Mr. Kleiman, who has those in his</p> <p>12 possession.</p> <p>13 Q. I understand. I'm asking about the</p> <p>14 originals because we may want to see the originals.</p> <p>15 So, I'd ask you not to destroy or otherwise get rid of</p> <p>16 the original documents.</p> <p>17 A. I'll keep the shoebox intact.</p> <p>18 Q. All right. Let's look at the first page of</p> <p>19 Deposition Exhibit 19. The first page of Deposition</p> <p>20 Exhibit 19, which appears to be a calendar date of</p> <p>21 January 24, 2005, has the word "Baxter."</p> <p>22 And then can you tell me what the word is</p> <p>23 after that?</p> <p>24 A. Sure. "Royal."</p> <p>25 Q. And what's after that? There is some other</p>	<p style="text-align: right;">80</p> <p>1 A. Mm-hmm.</p> <p>2 Q. What's the word after that?</p> <p>3 A. I don't know for certain, but if I had to</p> <p>4 guess, it looks like "10 a.m."</p> <p>5 Q. What are the words below that?</p> <p>6 A. "Noon Steve."</p> <p>7 Q. Do you know what that means?</p> <p>8 A. That means I had a meeting at noon with</p> <p>9 Steve.</p> <p>10 Q. Do you know who Steve is?</p> <p>11 A. No.</p> <p>12 Q. Did you meet with Royal Stuart on January</p> <p>13 19th, 2005?</p> <p>14 A. Again, my appointment book says I had an</p> <p>15 appointment with him. That means I probably kept that</p> <p>16 appointment.</p> <p>17 Q. What was the subject of the appointment; do</p> <p>18 you know?</p> <p>19 A. Don't know.</p> <p>20 Q. If it occurred, do you remember what was</p> <p>21 said during that appointment?</p> <p>22 A. No, I do not.</p> <p>23 Q. All right. Can you please go to the next</p> <p>24 page, GH001499? Are you there?</p> <p>25 A. I'm there.</p>

<p>1 Q. I see what appears to be "NHF 4-5-6." 2 Do you see that? 3 A. Yes, I do. 4 Q. Can you explain that to me? 5 A. Yeah. That means that I was in a meeting 6 in Dallas at the Hyatt. It was the National 7 Hemophilia Foundation meeting, the 4th, 5th and 6th, 8 obviously, of November. 9 Q. And what year was that? 10 A. Good question. '04. 11 Q. I note on that same page something has been 12 blacked out or redacted. 13 Do you see that? 14 A. Yes, I do. 15 Q. Can you tell me why something was redacted 16 on that page? 17 A. Specifically I can't. Generally do you 18 want -- 19 Q. Sure. Why generally are there redactions 20 throughout these pages? 21 A. I would say that's probably some personal 22 notation, something that had nothing to do with Baxter 23 or this case. 24 Q. Okay. Can I have you turn to the next 25 page, GH001500? Can you read what it says at the top</p>	<p>81 1 okay? I'm just trying to say if it's in the 2 appointment book and it's not scratched out, that 3 means I believe I had that meeting. If you say to me, 4 "Are you absolutely certain that that meeting 5 occurred," well, no. 6 Q. And I need to know what occurred at that 7 meeting. 8 A. And my answer on that one is I don't know. 9 Q. Can you turn to the next page, GH001501? 10 A. Yes. 11 Q. Can you read that for me on that calendar 12 date? 13 A. Yes. "Noon Jeff Beck Millennium Grill." 14 Q. Who's Jeff Beck? 15 A. Baxter rep. 16 Q. Do you remember what you and Jeff Beck 17 discussed that day? 18 A. No, I do not. 19 Q. Mr. Hamilton, I'll make this a little 20 easier maybe. Several of the pages of your calendar 21 pages here mention things like NHF. 22 What does NHF mean? 23 A. National Hemophilia Foundation meeting. 24 Q. Okay. If I ask you what happened, for 25 example, at the National Hemophilia Foundation meeting</p>
<p>82 1 of that page? 2 A. If you're referring to the part under 3 "Monday" where it says, "Baxter 1 p.m."? 4 Q. Yes. 5 A. Oh, yeah. Okay. This says, "Baxter 1 p.m. 6 North to Lake-Cook Road." 7 What that means is that I was meeting with 8 Baxter at their facility in Chicago. 9 Q. Okay. Who did you meet with that day? 10 A. That particular day I can't say for 11 certain. Typically if I was at Baxter's headquarters, 12 Pete O'Malley would have been there. But it could 13 have been -- who else was with him I wouldn't know for 14 sure. 15 Q. Do you have a specific memory what occurred 16 on that day, if that meeting actually occurred? 17 A. Was that two questions? 18 Q. I'll start over. 19 Do you remember having a specific meeting 20 on that day? 21 A. I do not know if it actually occurred. I 22 believe that's where you're going. You want me to 23 say, right? 24 Q. I'm just trying to assess -- 25 A. And I'm trying to answer you honestly,</p>	<p>84 1 that is on GH001502, will you be able to tell me what 2 occurred during that meeting? 3 A. Specifically, no. 4 Q. And will you be able to tell me what 5 occurred at any of the meetings that are identified in 6 any of these calendar pages? 7 A. There may be -- generally speaking the 8 answer is no. 9 There may be one or two where I would be 10 able to say -- for example, if you look at 1506, 11 Friday, August 16th, where it says, "Slides to 12 Baxter," okay? And it was just 10 days before that we 13 have a -- I have a notation for a Baxter conference 14 call. 15 The slides going to Baxter would have been 16 my what I call PBM 101 slides. This is where we were 17 discussing things about PBMs and what their 18 involvement in the specialty pharmaceutical market's 19 gonna be. And I had a slide presentation that 20 described, you know, some just general stuff about how 21 PBMs operate. 22 So, again, we can go back and say that, 23 well, that means that probably Wednesday, February 5th 24 was a discussion about PBMs in the specialty pharmacy 25 market and how it applies to both IGIV and to</p>

<p>85</p> <p>1 hemophilia products.</p> <p>2 And the following one that says "Slides"</p> <p>3 would have been I sent them the deck, the slide deck.</p> <p>4 However, other than that -- let me help</p> <p>5 you. Other than that, for these entries where it says</p> <p>6 Baxter this, NHF that or whatever, it merely indicates</p> <p>7 that I had a meeting scheduled with them. And I can't</p> <p>8 say that it actually happened for certain. And what</p> <p>9 the subject was I can't say for certain, either.</p> <p>10 Does that help?</p> <p>11 Q. It does. Thank you.</p> <p>12 Let's go to GH001502, "NHF."</p> <p>13 Can you tell me what year this is?</p> <p>14 A. I have a notation at the top that says '03.</p> <p>15 Q. Okay. That handwritten note at the top is</p> <p>16 your note?</p> <p>17 A. My handwriting, yes.</p> <p>18 Q. And was that created when you made the</p> <p>19 copies of this?</p> <p>20 A. Yes. And I did that, obviously, because</p> <p>21 this particular page of the appointment book didn't</p> <p>22 have the year on it.</p> <p>23 Q. Okay. Where were you employed at the time?</p> <p>24 A. In 2003?</p> <p>25 Q. 2003.</p>	<p>87</p> <p>1 developed his knowledge of Baxter's practices from his</p> <p>2 intimate familiarity with the industry, but had no</p> <p>3 opportunity to develop documentary evidence."</p> <p>4 Do you see that?</p> <p>5 A. Yes, I do.</p> <p>6 Q. Does this help you remember whether you met</p> <p>7 with Justice Department lawyers at any time prior to</p> <p>8 the date the Complaint was filed?</p> <p>9 A. No, it doesn't.</p> <p>10 Q. Okay. And is the same -- is that your same</p> <p>11 answer with regard to meeting with representatives of</p> <p>12 the various states that are identified in your</p> <p>13 Complaint?</p> <p>14 A. Yes.</p> <p>15 Q. It doesn't help you?</p> <p>16 A. No. I mean, if you're -- I'll try and</p> <p>17 offer you some help on this to at least put it in</p> <p>18 context.</p> <p>19 In the course of my job working with</p> <p>20 various qui tam lawyers, it's quite common for me to</p> <p>21 meet with state and FUCU units and the DOJ people</p> <p>22 and -- the National Association of Medicaid Fraud and</p> <p>23 Control Units -- and to meet with them on behalf of</p> <p>24 clients. So, I do that all the time.</p> <p>25 So, when you say, well, go back a couple</p>
<p>86</p> <p>1 A. I was an employee of Express Scripts.</p> <p>2 That's when I was a customer of Baxter's.</p> <p>3 Q. Right.</p> <p>4 (Deposition Exhibit Number 20 was</p> <p>5 marked for identification.)</p> <p>6 (Document tendered to the</p> <p>7 witness.)</p> <p>8 BY MR. JACKSON:</p> <p>9 Q. Mr. Hamilton, let me show you what's been</p> <p>10 marked as Deposition Exhibit 20. Deposition Exhibit</p> <p>11 20 is an April 22, 2005 letter from Mr. Kleiman to the</p> <p>12 Attorney General and Michael Theis.</p> <p>13 Do you see that?</p> <p>14 A. Yes, I do.</p> <p>15 Q. Have you ever seen this document before?</p> <p>16 A. I believe I have.</p> <p>17 Q. It says in the second -- I'm sorry -- in</p> <p>18 the first sentence, "I am pleased to forward to you</p> <p>19 the Complaint along with this statement disclosing all</p> <p>20 material evidence. The immediately available evidence</p> <p>21 is scant. Only one of the two relators, Ms. Linnette</p> <p>22 Sun, was employed by Baxter, and her opposition to the</p> <p>23 practices described herein led to Baxter firing her</p> <p>24 and giving her no opportunity to preserve documentary</p> <p>25 evidence. The other relator, Mr. Greg Hamilton,</p>	<p>88</p> <p>1 years, and when did you meet with them, that's why I'm</p> <p>2 going I don't know.</p> <p>3 MR. JACKSON: Okay. Let's go off the record.</p> <p>4 (Discussion off the record.)</p> <p>5 (Whereupon, at 12:48 p.m., the</p> <p>6 deposition was recessed, to</p> <p>7 reconvene at 1:30 p.m., this same</p> <p>8 day, January 21, 2010.)</p>

<p style="text-align: right;">89</p> <p>1 (Whereupon, the deposition 2 resumed at 1:36 p.m.) 3 GREG HAMILTON, 4 called as a witness herein, having been previously 5 duly sworn and having testified, was examined and 6 testified further as follows: 7 EXAMINATION (Resumed) 8 BY MR. JACKSON: 9 Q. Mr. Hamilton, can I refer you back to 10 Deposition Exhibit 6, your Declaration, please? 11 A. Yes. 12 Q. In paragraph 2, the final sentence, you 13 refer to, "Those meetings specifically concerned the 14 pricing of several of the Baxter products discussed in 15 the Complaint." 16 Do you see that? 17 A. Yes, I do. 18 Q. What pricing were you referring to? 19 A. The ones -- and again, pricing is a big 20 subject. We had discussed -- let me read the 21 paragraph first. 22 (Short interruption.) 23 BY THE WITNESS: 24 A. Again, "pricing" is kind of a big word. 25 So, when I refer to "pricing," I'm referring to the</p>	<p style="text-align: right;">91</p> <p>1 Pete O'Malley had asked me to come out and 2 discuss contracting issues. He brought into the room 3 people that he identified as Baxter contracting -- 4 people who work in their Contracting Department. And 5 he asked me to go through and explain to them how 340B 6 pricing worked, how it was calculated and 7 administered. And I did that. 8 Q. Now, is any of the information that took 9 place in that meeting regarding 340B the subject of 10 any of your claims in this Complaint that is Exhibit 11 7? 12 A. No, not specifically. 13 Q. In paragraph 4, the first sentence is the 14 following: "While serving in those positions I 15 frequently met with Baxter's senior management to 16 discuss the market for hemophilia products." 17 Do you see that? 18 A. Yes, I do. 19 Q. Do you remember specific conversations you 20 had with senior management regarding hemophilia 21 product pricing? 22 A. Well, -- 23 Q. I'm sorry. The market for hemophilia. You 24 don't say "pricing" there. You say, "market." 25 A. Yes. There is one conversation that I do</p>
<p style="text-align: right;">90</p> <p>1 price that Baxter was selling to me as a client. 2 BY MR. JACKSON: 3 Q. At Express Scripts? 4 A. That is correct. So, of course, some of 5 the stuff would have been basically, you know, 6 contract negotiations. Certainly part of -- you know, 7 with every price of what a customer or a manufacturer 8 sells their drug for there's also the accompanying AWP 9 that goes along with that. 10 In addition to that, we also discussed on 11 several occasions what's called PHS, otherwise known 12 as 340B pricing. 13 Q. All right. So, let's --I understand when 14 you refer to some of those communications referred to 15 the price to Express Scripts. What was your 16 communication with Larry Guiheen or Peter O'Malley 17 regarding AWP? 18 A. I actually -- I mean, I can't tell you any 19 specific time and exactly what we talked about. 20 Q. Okay. With regard to the PHS, the 340B 21 pricing, can you tell me what you discussed with these 22 gentlemen as you reference in paragraph 2? 23 A. I can. There was one particular time, and 24 I can't tell you what the date was, but it was one of 25 the meetings I had at Baxter headquarters.</p>	<p style="text-align: right;">92</p> <p>1 remember very specifically. I'll address the others 2 after I address this first one. 3 And that was -- it was when we met with 4 Larry Guiheen. And this was -- oh, I'm going to guess 5 this was within six months of Advate's launch. And I 6 met with Larry at some sort of a trade show. It could 7 have been NHF. But I do remember it was in an exhibit 8 hall. I can picture where we were. 9 So, we were in an exhibit hall, and we were 10 talking about Advate. I expressed to Larry that my 11 opinion that they had come out with, they'd launched 12 with too high of a premium for Advate over their other 13 product and the comparable products, the recombinant 14 products, and that they came out just too high and 15 they needed to drop that price. 16 And I felt that his uptake on conversions 17 from other factor products to Advate was being 18 inhibited by the extensive or excessive margin. You 19 know, they were charging too much for it in comparison 20 to the other drugs. 21 And I remember suggesting, you know, if you 22 could just drop that 7 or 8 cents or whatever the 23 number was at the time, I think that you could reduce 24 the differential to where it's not a deal breaker for 25 insurance companies and people aren't gonna go, "Wait</p>

<p>93</p> <p>1 a minute. 15 cents a unit times a couple hundred 2 thousand units a year, prove to me that Advate's that 3 much better," which, of course, would be a very 4 difficult thing to do because it's a conceptual issue. 5 So, I made that point, and I said, "If you 6 could get it down to where it's, you know, 5 cents, 6 7 cents, I don't think you'd have the push back and you 8 could convince the patients, you know, to recommend or 9 to ask their doctor for a switch and that they could 10 then get it through the insurance companies." 11 So, that was one very, very specific 12 discussion we had on pricing. It was of Advate. 13 Q. Do you remember when Advate launched? 14 A. Yeah. It was, like, spring of 2003, summer 15 of 2003, somewhere in there. 16 Q. And when you say "launched," do you mean 17 actually can start making sales? 18 A. Yeah. I forget the approval date, but we 19 can look that up. I think it was approved in, I don't 20 know, April, May, something like that. But there 21 wasn't a great delay from when it was approved to when 22 it was launched. It was probably, I don't know, two 23 months at the most. 24 Q. Okay. And when you say -- this is my term, 25 my phrase, "uptake or uptick over its other products,"</p>	<p>95</p> <p>1 it a second thought in terms of paying. 2 And so, therefore, they'd be able to 3 convert patients from current therapies, whether it be 4 theirs or someone else's, to Advate more rapidly than 5 what they were doing. 6 Q. Okay. So, from your perspective you did 7 not believe that the market price of Advate, the new 8 therapy, that the delta was not justified by the 9 difference in the products? 10 A. Yes. But let me say justified in the minds 11 of the people who were actually paying the bill, the 12 payers, okay? And the delta was so large that it got 13 their attention. And that was the key. First of all, 14 it got their attention. The delta was so large that 15 it jumped out, you know. 16 And all of a sudden the claims were bigger 17 than they were before and the dollar signs caught 18 their attention. That brought scrutiny to the 19 product. And that made people then question is this 20 new product worth that much more than what the other 21 one is? 22 And, of course, Baxter was standing up 23 straight and saying, "Recombinant's a very safe drug 24 and it treats Factor VIII." And they were saying all 25 these wonderful things about Recombinate. As a matter</p>
<p>94</p> <p>1 did you mean the price that Baxter would sell to the 2 market over the price it would sell to the market for 3 Recombinate? 4 A. Yes. The difference -- what I was trying 5 to point out was that the difference -- Recombinate 6 was selling for, let's say, 89 cents at the time. And 7 when they launched Advate, it came out as a buck 15 8 ballpark. And so, the difference between 89 cents and 9 \$1.15 was just too great. 10 Q. For what? 11 A. For universal acceptance, for insurance 12 companies, for payers to say, "Yeah, it's worth it. 13 I'll pay that much more." Because if they're going to 14 pay an extra 20 cents a unit and patients are using 15 anywhere from a hundred thousand to a million units a 16 year, that turns out to be a lot of dollars. And it 17 got people's attention. 18 So, the difference was so great -- it's 19 kind of like pricing that's called the noticeable 20 difference curve. It was the same thing. It was so 21 noticeable that it got attention. 22 Had the number been smaller, it would have 23 passed through without people scrutinizing it and 24 more -- and patients would have been accepted and 25 insurance companies wouldn't have even probably given</p>	<p>96</p> <p>1 of fact, they were saying the same thing about the 2 plasma products. Yeah, plasma products are perfectly 3 safe. Recombinate's perfectly safe. 4 Okay. Why do you want to spend 15, 20, 5 20-some cents more for another safe product? Does it 6 treat the bleed any better? Well, no. Well, then, 7 why this huge premium? 8 And that -- again, the delta was so big 9 that it was getting insurance companies', what I call 10 payers, attention, and it was inhibiting their 11 conversion rate. 12 Q. Conversion rate, again just to understand, 13 you mean converting from some other form of factor up 14 to Advate? 15 A. Let's not say "form" because then you get 16 into whether it's Factor VIII or Factor IX. 17 Q. I don't mean that. 18 A. I don't, either, but I just want to be 19 clear. From some competitor, let's say, including 20 themselves. 21 Q. Got it. Switching from a previously used 22 product to Advate? 23 A. Factor VIII product to Advate, yes. 24 Q. Okay. I understand. 25 All right. In paragraph 4 the third line</p>

<p style="text-align: right;">97</p> <p>1 up, fourth line up, it says, "I also made at least 2 three trips to Baxter's Deerfield, Illinois offices to 3 meet with Baxter managers to discuss pricing." 4 Now, you've already told me about the 340B 5 conversation. And that's kind of in the next several 6 sentences. 7 Do you remember what the other two meetings 8 were about? 9 A. Not specifically, no. 10 Q. Okay. If you turn to paragraph 6, you 11 reference it this paragraph 6 of your Declaration that 12 is Deposition Exhibit 6, you reference a meeting with 13 Larry Guiheen about Baxter's pricing of Advate. 14 Is this the conversation that you and I 15 just had about the moving -- what's a good way to 16 describe the conversation we had? A marketing issue? 17 A. It's pricing and marketing. 18 Q. Okay. 19 A. And yes, that is the conversation I'm 20 referring to. 21 Q. Okay. Got it. 22 In paragraph 7 you refer to your time at 23 Express Scripts and Curascript and you talk about how 24 you, quote, interacted with Baxter's pricing managers, 25 close quote.</p>	<p style="text-align: right;">99</p> <p>1 give you an example, in which you and Miss Sun allege 2 that Baxter has violated certain provisions of the 3 various state laws and federal laws beginning in 1998. 4 Yet in Exhibit 21, page 2, you seem to say 5 that your Complaint is based upon events that first 6 occurred in 2000. Second sentence, paragraph 3, third 7 full paragraph: "This scheme was based on FDB's 2000 8 consent decree with the Department of Justice, and 9 consequently could not have been publicly disclosed in 10 any of the earlier filed Complaints cited by Baxter." 11 Do you see that? 12 A. Yes, I do. 13 Q. So, are you complaining about events that 14 occurred prior to 2000, or are you complaining about 15 events that occurred after this 2000 date? 16 A. You know, you referenced the 1998 stuff. 17 It is in the sections -- and I just have to defer to 18 Mr. Kleiman on that because all that legal stuff was 19 his. I just put, you know, put in what I knew. 20 Q. And all I want to understand is what you 21 believe. Mr. Kleiman and I will have lots of 22 conversations about these issues. 23 But when I look at the Complaint, I see 24 allegations that relate back prior to 2000. Yet in 25 your Opposition, which is Exhibit 21, it seems to</p>
<p style="text-align: right;">98</p> <p>1 Do you have any specific memory of pricing 2 conversations then? 3 A. No. 4 Q. And in the last sentence of paragraph 7 you 5 also reference, quote, numerous discussions with them 6 about pricing strategies. 7 Do you remember what the subject of those 8 pricing discussions were in paragraph 7? 9 A. I do not remember specific discussions. 10 (Deposition Exhibit Number 21 was 11 marked for identification.) 12 (Document tendered to the 13 witness.) 14 BY MR. JACKSON: 15 Q. Let me show you what's been marked as 16 Deposition Exhibit 21. Deposition Exhibit 21 is the 17 Memorandum in Opposition to Baxter International 18 Inc.'s Motion to Dismiss Relators' Complaint. 19 Do you see that? 20 A. Yes, I do. 21 Q. I have a generic question for you, sir. In 22 the Complaint -- 23 A. Is this a generic question coming from a 24 brand manufacturer? 25 Q. -- there are repeated allegations, and I'll</p>	<p style="text-align: right;">100</p> <p>1 premise the allegations on something that occurred in 2 2000. 3 Which is it to your knowledge? 4 A. Page 2 that I refer to says, "Relators' 5 allegations are based on Baxter's intentionally 6 forcing First DataBank (FDB) to misreport Baxter's 7 prices for biological products by refusing to give FDB 8 any WAC information." 9 A couple of things here. First of all, 10 yes, this aspect of the case was only 2000 going 11 forward, okay? Yes. 12 I would also say that when it says here, 13 "by refusing to give First DataBank any WAC 14 information," I think that's true, but I think that it 15 goes further into which WAC information they provide. 16 But in this case any WAC, I suppose, covers that. 17 I'm venturing off into the Law Department 18 here, but the part of the case that has to do with 19 First DataBank certainly is post-2000. 20 Q. Okay. So, let's back up. Now, how did you 21 know -- strike that. 22 Didn't you previously tell me that you 23 learned about what Baxter was telling First DataBank 24 via your communication with Kay Morgan? 25 A. Yes.</p>

<p>101</p> <p>1 Q. Okay. Let's now turn to the Complaint, 2 which is Deposition Exhibit 7. Paragraph 24 on page 9 3 includes the following language: "Prior to May of 4 2000 FDB's misreporting of price information was 5 suspected or known by state Medicaid agencies." 6 Did you provide that information to the 7 Complaint? 8 A. I did, but I may not have been the only 9 person that provided that. 10 Q. I'm just interested in your knowledge and 11 information. 12 How did you know that? How did you know 13 what state Medicaid agencies knew? 14 A. Well, because I had personally dealt with 15 several state Medicaid agencies, both while I was at 16 Bayer and while I was at Express Scripts. So, you 17 know, I had personally talked to and met with, you 18 know, the Texas Drug Vendor Program, Jerry Weiss down 19 in Florida and various other people who openly 20 discussed the fact that, you know, we know the AWP's 21 aren't right. 22 Q. Now, in the next sentence of paragraph of 23 24 you refer to a "May 2000 FDB agreement with the 24 Justice Department." 25 Do you see that in the second sentence?</p>	<p>103</p> <p>1 that there was a problem with AWP's, and the DOJ was 2 looking for a way to contain, I guess would be the way 3 to put it, the problem. 4 So, because First DataBank was the data 5 bank that all the state Medicaid agencies used, the 6 DOJ went to First DataBank and said, "From now on you 7 are not to take AWP information from the 8 manufacturers. You're just not to -- if they give it 9 to you, you don't accept it. You don't publish what 10 they tell you to publish. Here's how you're going to 11 calculate AWP's." 12 And they gave them a methodology that they 13 were to use from that point forward to calculate AWP. 14 Q. What was that methodology? 15 A. First DataBank was instructed to take the 16 WAC or wholesale acquisition cost, otherwise known as 17 wholesale selling price, from a manufacturer and then 18 to go to the -- to a group of wholesalers and do a 19 survey, survey the wholesalers as to what they would 20 mark this product up. And they did it by labeler 21 code. 22 But anyway, they were to go to the 23 wholesalers and ask them to tell them what their 24 markup would be. This is on not pass-through 25 contracts, but on what they would charge to a</p>
<p>102</p> <p>1 A. Yes, I do. 2 Q. What can you tell me about that May 2000 3 agreement between FDB and the Department of Justice? 4 A. Well, I think that some of this comes out 5 of the case I was involved with with Bayer and that 6 the Department of Justice was looking for some sort of 7 a solution to the, quote, unquote, AWP problem. 8 And it was one thing to settle with a 9 company like Bayer retroactively, but one of the 10 issues was, you know, how do they resolve this problem 11 going forward. And not just with Bayer, but with many 12 manufacturers. 13 And so, at the time the practice was, and I 14 can tell you, you know, as someone who did it, all 15 three data banks, Medispan, Red Book and First Data, 16 would request from the manufacturers their AWP's. 17 "What do you want your AWP to be?" 18 I would get a form, and it would have all 19 of our drugs on it and, you know, columns and rows, 20 and it would have your current AWP in there and then a 21 blank for what do you want it to be next time. 22 And this was how AWP's were done at that 23 time. The manufacturer just picked their AWP. 24 Once it became an issue, this was, you 25 know, with the Unicare case and others, that AWP's --</p>	<p>104</p> <p>1 retail-type customer, what markup they would have for 2 that labeler code. 3 They were to then do a weighted average of 4 wholesalers. And whatever that multiplier was, which 5 we all know now is typically 1.2 or 1.25, they would 6 then say that that is the multiplier for that labeler 7 code. They would then take that multiplier and 8 multiply that times the WAC, and that would determine 9 the AWP. 10 Q. Now, does your Complaint allege that Baxter 11 did not give a WAC to First DataBank? 12 A. Yes. 13 Q. And what did Baxter give to First DataBank? 14 A. According to Kay Morgan, they received a 15 letter from Baxter stating that -- stating their list 16 price, and they called it list price, was \$1.31 and 17 that they wanted an AWP also to be \$1.31. 18 Q. All right. And then you've already talked 19 to me about your conversation with Kay Morgan, right? 20 A. I believe we have, yes. 21 Q. Okay. Can I have you turn to page 17 of 22 the Complaint, Exhibit 7? After paragraph 48 there is 23 bold and highlighted language, "Best Price And Stark 24 Violations." 25 The first sentence says -- I'm sorry.</p>

<p style="text-align: right;">105</p> <p>1 The first sentence, paragraph 49: "Baxter</p> <p>2 had a marketing practice of offering 'Volume Committed</p> <p>3 Contracts' to institutional healthcare providers (such</p> <p>4 as hospitals, nursing homes and home health</p> <p>5 agencies)."</p> <p>6 Do you see that?</p> <p>7 A. Yes, I do.</p> <p>8 Q. Do you believe that there's something wrong</p> <p>9 about volume committed contracts?</p> <p>10 A. No.</p> <p>11 Q. I'm sorry?</p> <p>12 A. No.</p> <p>13 Q. Okay. Then is there -- what is Baxter's</p> <p>14 practice regarding volume committed contracts that you</p> <p>15 believe give rise to best price or Stark violations?</p> <p>16 A. Well, first of all, let me say that this</p> <p>17 section comes from Linnette Sun.</p> <p>18 Q. Okay.</p> <p>19 A. Maybe that's -- I've said enough.</p> <p>20 Q. No, I'm just trying to understand. It</p> <p>21 appears that something's wrong with volume committed</p> <p>22 contracts. And you said you don't think that</p> <p>23 anything's wrong with volume committed contracts.</p> <p>24 A. That's correct.</p> <p>25 Q. Okay. Do you believe that Baxter -- that</p>	<p style="text-align: right;">107</p> <p>1 of this Complaint in connection with Stark violations?</p> <p>2 A. Again I don't know what Stark violations</p> <p>3 are, so I don't know if I had any input.</p> <p>4 Q. If you look at paragraph 52, it says, "The</p> <p>5 discounts Baxter offered to institutional providers</p> <p>6 under the Volume Committed Contracts also violated</p> <p>7 Stark II, 42 U.S. Section 1395nn which prohibits</p> <p>8 compensation arrangements such as Volume Committed</p> <p>9 Contracts between entities such as Baxter, which</p> <p>10 furnishes goods or services, and healthcare providers,</p> <p>11 which are in a position to order or refer patients for</p> <p>12 the receipt of such goods or services."</p> <p>13 Does that help you refresh your</p> <p>14 recollection what the Stark act might or might not do?</p> <p>15 MR. KLEIMAN: Assumes facts not in evidence.</p> <p>16 Go ahead.</p> <p>17 BY THE WITNESS:</p> <p>18 A. When you say "helps," it gives me a little</p> <p>19 bit more information, but I still don't know.</p> <p>20 BY MR. JACKSON:</p> <p>21 Q. Okay. And do you know anything about</p> <p>22 Baxter's practices vis-a-vis volume committed</p> <p>23 contracts?</p> <p>24 A. No.</p> <p>25 Q. In paragraph 58 of the Complaint that's</p>
<p style="text-align: right;">106</p> <p>1 as a result of volume committed contracts Baxter has</p> <p>2 done something wrong, impermissible or illegal with</p> <p>3 regard to best price?</p> <p>4 A. I don't know.</p> <p>5 Q. What is best price? Do you know?</p> <p>6 A. You want the version prior to 2007?</p> <p>7 Q. I want whatever your definitions are.</p> <p>8 A. Well, CMS published -- I'm sure you're</p> <p>9 familiar with the Deficit Reduction Act's changes in</p> <p>10 definitions on best price and ANP that was Published</p> <p>11 in fall of 2007. But this case is prior to that, so I</p> <p>12 think we're looking at that definition of best price.</p> <p>13 And best price is, I believe, defined in</p> <p>14 the Social Security Act as the lowest price offered by</p> <p>15 a manufacturer net of all rebates, terms and</p> <p>16 conditions.</p> <p>17 Q. Do you have any information that would</p> <p>18 suggest that Baxter failed to calculate best price in</p> <p>19 an appropriate way?</p> <p>20 A. No, I do not.</p> <p>21 Q. Do you believe that volume committed</p> <p>22 contracts create Stark violations?</p> <p>23 A. I don't know for sure what Stark violations</p> <p>24 are.</p> <p>25 Q. Did you have any input to the allegations</p>	<p style="text-align: right;">108</p> <p>1 Deposition Exhibit 7 there are allegations that relate</p> <p>2 to AMPs. Do you know what an AMP is?</p> <p>3 A. Sure. Average manufacturer's price.</p> <p>4 Q. Do you have any information regarding</p> <p>5 Baxter's practices regarding calculating AMPs or BPs?</p> <p>6 A. No, I do not.</p> <p>7 Q. Do you believe that volume committed</p> <p>8 contracts, the use of volume committed contracts</p> <p>9 constitutes a violation of the Anti-Kickback Act?</p> <p>10 MR. KLEIMAN: Incomplete hypothetical.</p> <p>11 BY MR. JACKSON:</p> <p>12 Q. You can answer the question.</p> <p>13 A. I'm not -- I'm not well-versed enough on</p> <p>14 anti-kickback to tell you whether it does or doesn't.</p> <p>15 BY MR. JACKSON:</p> <p>16 Q. Do you believe that a manufacturer who</p> <p>17 provides discounts to a purchaser, that those</p> <p>18 discounts are improper or illegal in any way?</p> <p>19 A. Well, --</p> <p>20 MR. KLEIMAN: Calls for a legal conclusion.</p> <p>21 BY THE WITNESS:</p> <p>22 A. Yeah, I think that's --</p> <p>23 BY MR. JACKSON:</p> <p>24 Q. Go ahead.</p> <p>25 A. It's really vague. I suppose it depends on</p>

<p>109</p> <p>1 a whole flock of things in terms of what are the</p> <p>2 discounts for. I mean, I'll give you a discount if</p> <p>3 you do something illegal, well, then, no, that's</p> <p>4 illegal.</p> <p>5 Q. What about volume discounts?</p> <p>6 A. I don't see a problem with volume</p> <p>7 discounts.</p> <p>8 MR. JACKSON: Let's go off the record.</p> <p>9 (Discussion off the record.)</p> <p>10 (Recess.)</p> <p>11 MR. JACKSON: I have no further questions for</p> <p>12 this witness regarding the jurisdictional issues.</p> <p>13 MR. KLEIMAN: Thank you. I've got nothing</p> <p>14 further.</p> <p>15 (Whereupon, the deposition was</p> <p>16 concluded at 2:22 p.m., this day,</p> <p>17 January 21, 2010.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>111</p> <p>1 The undersigned is not interested in the</p> <p>2 within case, nor of kin or counsel to any of the</p> <p>3 parties.</p> <p>4 Witness my official signature and seal as</p> <p>5 Notary Public in and for Grundy County, Illinois, on</p> <p>6 this 22nd day of January, A.D. 2010.</p> <p>7</p> <p>8</p> <p>9</p> <p>10 Margaret A. Bachner, CSR, RMR, CRR</p> <p>11 Illinois CSR No. 84-1481</p> <p>12 Notary Public, Grundy County, Illinois</p> <p>13 My Commission Expires June 22, 2010</p> <p>14 311 South Wacker Drive, Suite 300</p> <p>15 Chicago, Illinois 60606</p> <p>16 Phone: (312) 386-2000</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>110</p> <p>1 STATE OF ILLINOIS)</p> <p>2)</p> <p>3 COUNTY OF GRUNDY)</p> <p>4 The within and foregoing deposition of the</p> <p>5 aforementioned witness was taken before MARGARET A.</p> <p>6 BACHNER, CSR and Notary Public, at the place, date and</p> <p>7 time aforementioned.</p> <p>8 There were present during the taking of the</p> <p>9 deposition the previously named counsel.</p> <p>10 The said witness was first duly sworn and</p> <p>11 was then examined upon oral interrogatories; the</p> <p>12 questions and answers were taken down in shorthand by</p> <p>13 the undersigned, acting as stenographer and Notary</p> <p>14 Public; and the within and foregoing is a true,</p> <p>15 accurate and complete record of all of the questions</p> <p>16 asked of and answers made by the aforementioned</p> <p>17 witness, at the time and place hereinabove referred</p> <p>18 to.</p> <p>19 The signature of the witness was not</p> <p>20 waived, and the deposition was submitted, pursuant to</p> <p>21 Rules 30(e) and 32(d) of the Rules of Civil Procedure</p> <p>22 for the United States District Court, to the deponent</p> <p>23 per copy of the attached letter.</p> <p>24</p> <p>25</p>	<p>112</p> <p>1 UNITED STATES DISTRICT COURT</p> <p>2 DISTRICT OF MASSACHUSETTS</p> <p>3 IN RE: PHARMACEUTICAL)</p> <p>4 INDUSTRY AVERAGE WHOLESAL)</p> <p>5 PRICE LITIGATION) MDL No. 1456</p> <p>6) Master File No.</p> <p>7 THIS DOCUMENT RELATES TO:) 1:01-CV-12257-PBS</p> <p>8)</p> <p>9 United States ex rel.) Sub-Category Case</p> <p>10 Linnette Sun and Greg) No. 1:08-CV-11200</p> <p>11 Hamilton, Relators)</p> <p>12 v.)</p> <p>13)</p> <p>14 Baxter Hemoglobin)</p> <p>15 Therapeutics and Baxter)</p> <p>16 International Inc.)</p> <p>17 I, GREG HAMILTON, hereby certify that I have</p> <p>18 read the foregoing transcript of my deposition given</p> <p>19 at the time and place aforesaid, consisting of Pages 1</p> <p>20 to 112, inclusive, and I do again subscribe and make</p> <p>21 oath that the same is a true, correct, and complete</p> <p>22 transcript of my deposition so given as aforesaid, and</p> <p>23 includes changes, if any, made by me.</p> <p>24</p> <p>25 GREG HAMILTON</p> <p>SUBSCRIBED AND SWORN TO before me this</p> <p>day of 2010.</p> <p>Notary Public</p>

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESale PRICE
LITIGATION

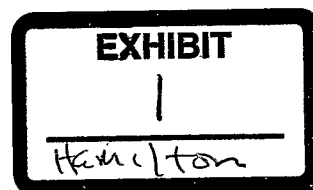
MDL No. 1456
Master File No. 1:01-CV-12257-PBS
Sub-Category Case No. 1:08-CV-11200

THIS DOCUMENT RELATES TO:
*United States ex rel. Linnette Sun and Greg
Hamilton, Relators*
v.
*Baxter Hemoglobin Therapeutics and Baxter
International Inc.*

Judge Patti B. Saris

NOTICE OF DEPOSITION OF RELATOR GREG HAMILTON

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, Defendant Baxter International Inc., by its attorneys Dickstein Shapiro LLP, notices the deposition of Relator Greg Hamilton on a date and time, and at a place, to be determined. The deposition will be recorded stenographically and will continue from day to day until completed.



October 19, 2009

/s/ Ruchi Jain

J. Andrew Jackson

Merle M. DeLancey

Tina D. Reynolds

Ruchi Jain

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Boston, MA 02108

Telephone: (617) 720-2880

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Counsel for Defendant Baxter International Inc.

CERTIFICATE OF SERVICE

I, Ruchi Jain, hereby certify that on October 19, 2009, I caused a true and correct copy of the foregoing Notice of Deposition of Relator Greg Hamilton to be served on all counsel of record by electronic service by sending a copy to Lexis/Nexis for posting and notification to all parties.

/s/ Ruchi Jain

Ruchi Jain

DICKSTEIN SHAPIRO LLP

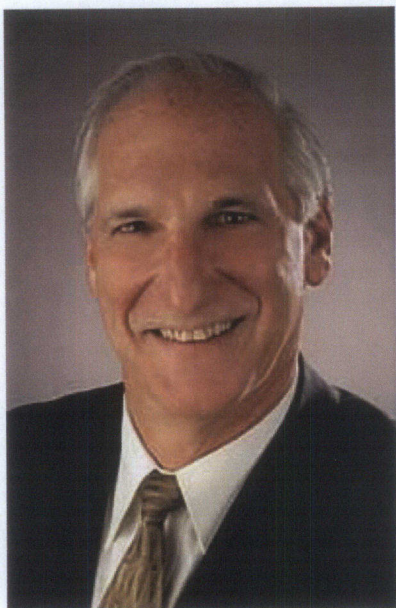
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Merck Pays \$400 Million In National Medicaid Fraud Settlement; New Investigation Model Ends Seven-Year *Qui Tam* Whistleblower Cas

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High-Resolution Photo

Steven Cohen

Steven H. Cohen has been practicing law in Chicago for more than 25 years. He has represented whistleblowers in *qui tam* cases since 1995. In 2001, he founded the Cohen Law Firm, where he has dedicated his practice to representing whistleblower clients brought under federal and state false claims laws.

Steve has investigated and prosecuted dozens of sealed and unsealed *qui tam* cases on behalf of physicians, nurses, compliance officers, billing coordinators, sales managers and senior company officers in cases spanning the spectrum of other government programs fraud and abuse. He has hands-on expertise with the federal False Claims Act and state whistleblower/*qui tam* laws. Through his practice, Steve has developed close working relationships with U.S. Department of Justice lawyers, and prosecutors in United States Attorneys Offices and States' Attorneys Offices throughout the country.

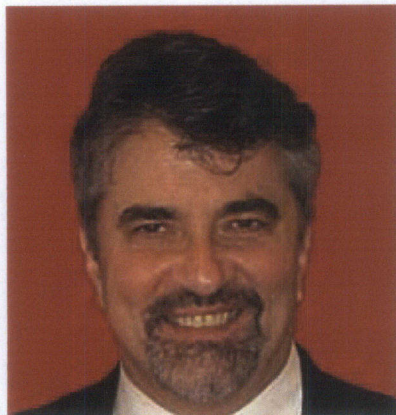
Steve is currently lead Relator's counsel in State of Illinois *ex rel* Groeschke v. University of Chicago Hospitals, in which the State of Illinois has joined in *pro se* University of Chicago Hospitals in a first-of-its-kind Medicaid fraud case re treatment of critically ill babies admitted to the hospital's neonatal intensive

In 2000, Steve was retained by Dean Steinke to investigate Merck & Co., Inc.'s ("Merck") marketing practices of their most popular drugs including Zocor® and Vioxx®. That investigation led to the filing of the two cases, *United States v. Merck* and *Nevada ex rel Steinke v. Merck*. Steve was co-lead counsel for the Relator during the seven-year investigation conducted by the federal Government and the States' Medicaid Fraud Unit team. In the case, Steve worked with the Nevada Attorney General and his co-counsel to obtain a landmark ruling interpreting the Rebate Act's Best Price provisions. As a result of the closely coordinated work of federal and state prosecu

tor counsel, Merck agreed to pay more than \$400 million, \$399 million plus interest calculated from April 2007, to the Government and the states to settle the allegations in these cases.

As a co-founder of the Whistleblower Action Network, Steve and an alliance of lawyers investigate and prosecute lawsuits on behalf of whistleblowers. Today, Steve and other affiliated Whistleblower Action Network attorneys are involved in numerous pending investigations and cases throughout the country.

Steve is an adjunct faculty member at Northwestern Law School in Chicago where he teaches clinical trial advocacy on the faculty of the National Institute of Trial Advocacy (NITA). He also speaks about fraud and abuse issues to various professional groups.



Mark Kleiman

Mark Kleiman represents whistleblowers across the country. Cases he has handled have recovered more than \$500 million for the federal and state Governments.

The former executive director of a national consumer health group, Kleiman has served on the FDA advisory panel and on the boards of state licensing agencies and national organizations. He has been a consultant to the U.S. Department of Health and Human Services, the American Public Health Association, and the American Cancer Society.

Kleiman has lectured at Columbia University, UCLA, and the University of Illinois.

EXHIBIT

2

Hamilton



School of Law, and has taught seminars for the American Bar Association Health Lawyers Association. He has also discussed health care fraud as a Television network's MacNeil/Lehrer News Hour.

As an experienced trial lawyer, Kleiman has represented doctors, nurses, other whistleblowers in health care, as well as engineers and others in the construction, banking, and education industries. He has prosecuted fraud companies, hospitals, nursing home chains, and medical groups, as well as military contractors and vocational

Kleiman has also served as a government-appointed Special Master in cooperation with the California Department and the Los Angeles County District Attorney's Office during investigations of fraudulent medical-legal activities

Education

Kleiman is a cum laude graduate of the Southwestern University School of Law and holds a Master's in Public Administration from the University of California at Los Angeles. He has published in the Health Care Fraud & Abuse Newsletter, Ad Term Care, the Community Mental Health Journal, the Bulletin of the Joint Center for Political Studies, and the Behavioral Science.



High-Resolution Photo

BethAnne Yeager

BethAnne Yeager has been involved in *qui tam* litigation since 2004, working with Kleiman and the Cohen Law Group on a wide variety of cases under the False Claims Act ("FCA") and state false claims laws. A member of *qui tam* litigation bar Against Fraud, and part of the Whistleblower Action Network, she has been involved in the investigation and prosecution of the Nevada and Eastern District of Florida cases against Merck since 2004.

Yeager also is a counsel to relators in Illinois *ex rel.* Raymer and Grosche Chicago Hospital, an unsealed *qui tam* action brought under the Illinois Whistleblower and Recovery Act ("IWRPA") in which the State of Illinois is prosecuting the alleged false claims against Illinois Medicaid. She also has represented plaintiffs in retaliation cases brought under the anti-retaliation provisions of the FCA.

Yeager practiced in California since she was graduated from Cornell Law School. A member of the Wisconsin bar, she clerked for the Hon. Justice N. Patrick of the Wisconsin Supreme Court for the 2000-2001 term. Before and after her clerkship, she was a member of "Women and the Law" during summer sessions at the University of Wisconsin.

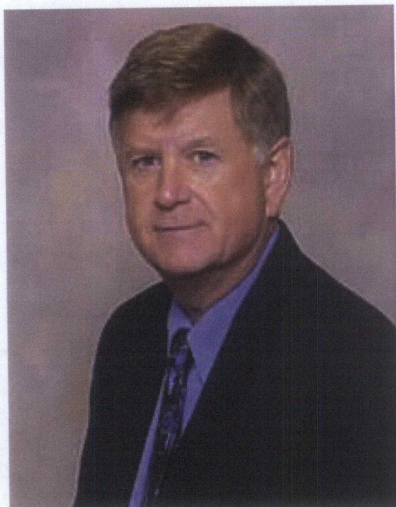
Prior to *qui tam* litigation, Yeager practiced in the areas of employment discrimination, and consumer fraud for more than 15 years. Her employment discrimination work includes representing a landmark decision from the Wisconsin Supreme Court that reversed a finding of immunity for the University of Wisconsin.

Among highlights of her legal career is a consumer fraud action for which she was named a finalist, with Kleiman, for Trial Lawyer of the Year Award by Trial Lawyers for Public Justice. Yeager also served as co-counsel in the first harassment trial in Marin County, California, resulting in the highest award against the State at the time for such

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Merck Pays \$400 Million In National Medicaid Fraud Settlement; New Investigation Model Ends Seven-Year *Qui Tam* Whistleblower Cas

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Drug Expert Greg Hamilton, Sr.

Greg Hamilton, our drug marketing expert in this case, has 31 years of experience in specialty pharmacy, pharmaceutical and biotech expert, which includes management, business development, and government contracting. He also is a subject matter expert regarding product reimbursement, Medicaid/Medicare implications and government contracting.

With an MBA in Marketing and Finance and a Bachelor of Science in Business Science, Hamilton has 20 years of experience as a pharmaceutical, nutritional account executive for major drug manufacturers.

For one drug manufacturer Hamilton served as Associate Manager and the Contract Sales and Federal Affairs, positions in which he was responsible for the submission of AMP and Best Price data.

As a Senior Product Manager, Hamilton authored the business settlement regarding Medicaid Fraud allegations over alleged manipulation of Average Wholesale Prices. The agreement with the U.S. Department of Justice provided financial and business practice elements, which permitted the manufacturer to participate in Medicaid, PHS (340b), and the Federal Supply Schedule.

Most recently, Hamilton served as the Vice President for the Bleeding Disorders Programs of a special pharmaceutical pharmacy benefit management company. Hamilton created a hemophilia program within the division, which, over several years, generated \$25 million in revenue.

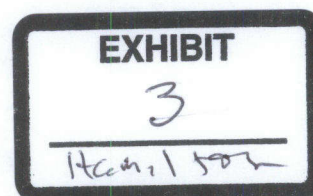
Previously, as a Senior Director of Strategic Sales for parent company he developed product launch programs for various companies, including channels and methods of distribution, pricing, packaging, reimbursement and promotion.

Hamilton received his Bachelor's Degree from Western Michigan University and his Master's from Illinois Institute of Technology, Stuart School of Management, Chicago.

[Greg Hamilton's Resume](#)

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Greg Hamilton

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hjtennis27@aol.com
(773) 351-0005

Specialty Pharmacy Expert • Thirty-one years Pharmaceutical Experience

Executive Summary

Innovative specialty pharmacy, Pharmaceutical, and Biotech expert with proven track record and quantifiable achievements. Experience in marketing, sales, business development, and government contracting. Earned MBA in Marketing and Finance and a Bachelor of Science in Business and Political Science.

Executive Highlights

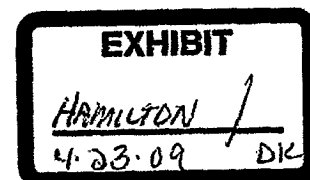
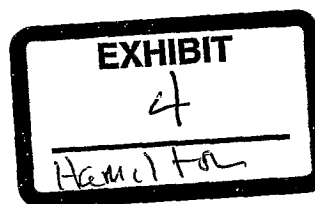
As Vice President of Bleeding Disorders Programs, created Hemophilia Program that grew to over 120 patients and more than \$25M a year in revenue. This program utilized an entirely new sales method while introducing the PBM and its clients to Hemophilia care and service.

As Senior Director of Strategic Sales, introduced a consulting service to ESI/SDS and its customers. In conjunction with promoting SDS's services to the BioTech and Pharmaceutical industries increased revenue and value by providing clients with product launch strategies/tactics covering pricing, packaging, promotion, reimbursement, and channels of distribution. These consulting agreements resulted in thousands of dollars in revenue and three exclusive distribution programs.

As Senior Product Manager, created the Bayer Direct Program. This program saved the lives of over 200 patients who were not able to procure their prescribed medication due to inefficient distribution channels. Bayer Direct involved Bayer distributing their Orphan Drug, Prolastin, directly to patient via a dedicated specialty pharmacy (operated under contract by Express Scripts).

As Senior Product Manager, authored the business settlement resolving a Medicaid Fraud lawsuit over alleged manipulation of AWP's. This agreement with the Medicaid States and the DOJ provided both financial and business practice elements, which allowed Bayer to continue to participate in Medicaid, PHS (340b), and Federal Supply Schedule.

As Senior Product Manager, developed and implemented contracting and pricing strategies for both pharmaceutical and biological products. These measures generated over \$20MM annually.



Greg Hamilton

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Career Development

CuraScript Pharmacy

Vice President - Bleeding Disorders Programs

2004 - 2006

Specialty Pharmacy division of Express Scripts.

- ♦ Created a hemophilia program within the specialty pharmacy business unit Cura-script.
- ♦ Grew program to \$25M in revenue in under three years
- ♦ Developed program strategic direction, pricing and management.
- ♦ Negotiated supplier agreements with National Plasma producers

Express Scripts, Inc.

Specialty Distribution Services

Senior Director Strategic Sales

2000 - 2003

Pharmacy Benefit Management (PBM) Fortune 100 company.

- ♦ Expanded Specialty Distribution Services into bio-tech drugs.
- ♦ Developed product launch programs for biotech companies. Programs provided all aspects of launch including channels and methods of distribution, pricing, packaging, reimbursement and promotion.
- ♦ Subject matter expert regarding product reimbursement, Medicaid/Medicare implications and government contracting.

Independent Consultant

Principle

1999 - 2000

Provided consulting services to Bayer and Express Scripts.

- ♦ Generated \$500M of incremental revenue between Bayer and Express Scripts through the implementation and operationalization the Bayer Direct Program.
- ♦ Developed new pricing strategies for numerous Bayer products.
- ♦ Produced target list of potential bio-tech customers for Express Scripts.

Bayer A.G.

Senior Product Manager

1998 - 2000

Created Bayer Direct, an integrated distribution business model for Prolastin.

- ♦ This revolutionary new business saved over 200 patient lives and generated \$14M of incremental profit per year.
- ♦ Overall pricing & channels of distribution for all Biological Products.
- ♦ Review all Medicaid and Medicare pricing issues.
- ♦ Primary business expert liaison in-house and external (Sidley and Austin) in government suit alleging AWP based Medicaid Fraud.

Manager, Marketing Research

1996 - 1997

- ♦ Primary research on both Biological & Pharmaceutical products.

Greg Hamilton

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-
- ♦ Provide marketing/sales with recommendations on pricing, channels of distribution, and promotional issues.

Manager Contract Sales and Federal Affairs **1995 - 1996**

- ♦ FSS negotiations with National Acquisition Center for both biologics and pharmaceuticals
- ♦ Monitor public and private reimbursement for biological products and recommend pricing/marketing.
- ♦ Review all Medicaid rebates and issues for Biological Products.
- ♦ Provide marketing/sales with recommendations on pricing, channels of distribution, and promotional issues.

Associate Manager Contract Sales and Federal Affairs **1997 - 1998**

- ♦ Calculation and Submission of AMP & Best Price.
- ♦ Calculation and Submission of Non-FAMP.
- ♦ FSS negotiations with National Acquisition Center.
- ♦ Profitability Analysis by Channels of Distribution.
- ♦ Projection / Evaluation of Marketing Incentives.

Account Executive **1973 - 1993**

Pharmaceutical, Nutritional, and Biological account executive for Abbott (ten years), Schering Plough (three years) and Cutter/Miles/Bayer (seven years).

EDUCATION

Illinois Institute of Technology - 1978
Stuart School of Management, Chicago, IL
Master of Business Administration- Marketing & Finance

Western Michigan University - 1972
Kalamazoo, MI
Bachelor of Science in Business and Political Science

BAXTER PRODUCTS W/ AWP HISTORY
04.11.05

ADVATE

NDC Number NDC: Drug File SourceESI Drug File National Drug File Mail Order Drug
File(ABQ) Active Only SearchClear Drug Name Drug Name: Drug File SourceESI Drug
File National Drug File Mail Order Drug File(ABQ) Active Only SearchClear
Search Results DrugGroupDrug NameNDCStrengthPkg SizeSource
IndicatorStatusDrugIndex

Records: 1 - 4 of 4

1ADVATE 1,000 UNITS KIT0094429400310000001.000MULTIACTIVE0
2ADVATE 1,500 UNITS KIT0094429400415000001.000SINGLEACTIVE1
3ADVATE 250 UNIT KIT009442940012500001.000MULTIACTIVE2
4ADVATE 500 UNIT KIT009442940025000001.000MULTIACTIVE3

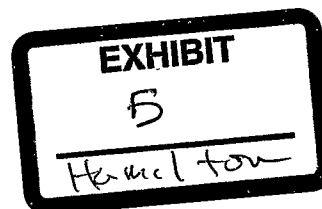
Drug DetailMedication:00944294003 ADVATE 1,000 UNITS KIT Formulary
Status:Formulary Formulary Policy:V/O - vol form/vol BBI Alternatives: Drug Class:01
CPC Indicator:Yes Category:

Gender Restriction: Age Minimum: Age Maximum: Maintenance Drug: Max Qty Retail:
Max Qty MO: Days Supply Retail: Days Supply MO: This is a summarization of limits
for this drug and does not contain all plan limitations.

For additional dispensing information view all Dispensing Limits.
To determine benefit specific limitations perform a Coverage Check.

Unit Dose:EA Strength:1000000 Package Size:1.000 Unit Dose Package:No
Repackaged:No DESI:No Dosage Form:INJ GPI:BRAND Source Indicator:MULTI-
SOURCE Status:ACTIVE Obsolete Date:12/31/9999 DEA Classification:

Manufacturing:BAXTER-HYLAND Therapy Class:000125000 HEMOSTATICS
Generic Code:000000596 FACTOR VIII (ANTHEMOPHL FCTR)
OTC/Legend:FEDERAL LEGEND
AWP History:05/13/2004 \$1.7500 08/25/2003 \$1.8800



RECOMBINATE

NDC Number NDC: Drug File SourceESI Drug File National Drug File Mail Order Drug
File(ABQ) Active Only SearchClear Drug Name Drug Name: Drug File SourceESI Drug
File National Drug File Mail Order Drug File(ABQ) Active Only SearchClear
Search Results DrugGroupDrug NameNDCStrengthPkg SizeSource
IndicatorStatusDrugIndex

Records: 1 - 3 of 3

1RECOMBINATE 220-400 UNIT VL009442938013100001.000MULTIACTIVE0
2RECOMBINATE 401-800 UNIT VL009442938026000001.000MULTIACTIVE1
3RECOMBINATE 801-1,240 UNITS VL0094429380310200001.000MULTIACTIVE2

Drug DetailMedication:00944293801 RECOMBINATE 220-400 UNIT VL Formulary
Status:Formulary Formulary Policy:V/O - vol form/vol BBI Alternatives: Drug Class:01
CPC Indicator:Yes Category:

Gender Restriction: Age Minimum: Age Maximum: Maintenance Drug: Max Qty Retail:
Max Qty MO: Days Supply Retail: Days Supply MO: This is a summarization of limits
for this drug and does not contain all plan limitations.

For additional dispensing information view all Dispensing Limits.
To determine benefit specific limitations perform a Coverage Check.

Unit Dose:EA Strength:310000 Package Size:1.000 Unit Dose Package:No
Repackaged:No DESI:No Dosage Form:INJ GPI:BRAND Source Indicator:MULTI-
SOURCE Status:ACTIVE Obsolete Date:12/31/9999 DEA Classification:

Manufacturing:BAXTER-HYLAND Therapy Class:000125000 HEMOSTATICS
Generic Code:000000596 FACTOR VIII (ANTIHEMOPHIL FC'TR)
OTC/Legend:FEDERAL LEGEND
AWP History:06/26/2001 \$1.6250 07/19/1998 \$1.2800 09/07/1997 \$1.2400

BEBULIN

NDC Number NDC: Drug File SourceESI Drug File National Drug File Mail Order Drug
File(ABQ) Active Only SearchClear Drug Name Drug Name: Drug File SourceESI Drug
File National Drug File Mail Order Drug File(ABQ) Active Only SearchClear
Search Results DrugGroupDrug NameNDCStrengthPkg SizeSource
IndicatorStatusDrugIndex

Records: 1 - 1 of 1

1BEBULIN VH IMMUNO 200-1,200 UN641930244027000001.000SINGLEACTIVE0

Drug DetailMedication:64193024402 BEBULIN VH IMMUNO 200-1,200 UN
Formulary Status:Formulary Formulary Policy:V/O - vol form/vol BBI Alternatives:
Drug Class:01 CPC Indicator:Yes Category:

Gender Restriction: Age Minimum: Age Maximum: Maintenance Drug: Max Qty Retail:
Max Qty MO: Days Supply Retail: Days Supply MO: This is a summarization of limits
for this drug and does not contain all plan limitations.
For additional dispensing information view all Dispensing Limits.
To determine benefit specific limitations perform a Coverage Check.

Unit Dose:EA Strength:700000 Package Size:1.000 Unit Dose Package:No
Repackaged:No DESI:No Dosage Form:INJ GPI:BRAND Source Indicator:SINGLE-
SOURCE Status:ACTIVE Obsolete Date:12/31/9999 DEA Classification:

Manufacturing:BAXTER-HYLAND Therapy Class:000125000 HEMOSTATICS
Generic Code:000000595 FACTOR IX COMPLEX (HUMAN) OTC/Legend:FEDERAL
LEGEND
AWP History:01/15/2005 \$0.9000 11/16/2001 \$0.7250

FEIBA

NDC Number NDC: Drug File SourceESI Drug File National Drug File Mail Order Drug
File(ABQ) Active Only SearchClear Drug Name Drug Name: Drug File SourceESI Drug
File National Drug File Mail Order Drug File(ABQ) Active Only SearchClear
Search Results DrugGroupDrug NameNDCStrengthPkg SizeSource
IndicatorStatusDrugIndex

Records: 1 - 2 of 2

1FEIBA VH IMMUNO 400-650 UNITS641930222034000001.000SINGLEACTIVE0
2FEIBA VH IMMUNO 651-1,200 UNIT641930222046000001.000SINGLEACTIVE1

Drug DetailMedication:64193022203 FEIBA VH IMMUNO 400-650 UNITS Formulary
Status:Formulary Formulary Policy:V/O - vol form/vol BBI Alternatives: Drug Class:01
CPC Indicator:No Category:

Gender Restriction: Age Minimum: Age Maximum: Maintenance Drug: Max Qty Retail:
Max Qty MO: Days Supply Retail: Days Supply MO: This is a summarization of limits
for this drug and does not contain all plan limitations.

For additional dispensing information view all Dispensing Limits.

To determine benefit specific limitations perform a Coverage Check.

Unit Dose:EA Strength:400000 Package Size:1.000 Unit Dose Package:No
Repackaged:No DESI:No Dosage Form:INJ GPI:BRAND Source Indicator:SINGLE-
SOURCE Status:ACTIVE Obsolete Date:12/31/9999 DEA Classification:

Manufacturing:BAXTER-HYLAND Therapy Class:000125000 HEMOSTATICS

Generic Code:000000600 ANTI-INHIBITOR COAGULANT COMP.

OTC/Legend:FEDERAL LEGEND

AWP History:01/17/2005 \$1.9100

HEMOFIL-M

NDC Number NDC: Drug File SourceESI Drug File National Drug File Mail Order Drug
File(ABQ) Active Only SearchClear Drug Name Drug Name: Drug File SourceESI Drug
File National Drug File Mail Order Drug File(ABQ) Active Only SearchClear
Search Results DrugGroupDrug NameNDCStrengthPkg SizeSource
IndicatorStatusDrugIndex

Records: 1 - 1 of 1

1HEMOFIL-M 200-1,500 UNITS VIAL009442935018500001.000SINGLEACTIVE0

Drug DetailMedication:00944293501 HEMOFIL-M 200-1,500 UNITS VIAL Formulary
Status:Formulary Formulary Policy:V/O - vol form/vol BBI Alternatives: Drug Class:01
CPC Indicator:Yes Category:

Gender Restriction: Age Minimum: Age Maximum: Maintenance Drug: Max Qty Retail:
Max Qty MO: Days Supply Retail: Days Supply MO: This is a summarization of limits
for this drug and does not contain all plan limitations.
For additional dispensing information view all Dispensing Limits.
To determine benefit specific limitations perform a Coverage Check.

Unit Dose:EA Strength:850000 Package Size:1.000 Unit Dose Package:No
Repackaged:No DESI:No Dosage Form:INJ GPI:BRAND Source Indicator:SINGLE-
SOURCE Status:ACTIVE Obsolete Date:12/31/9999 DEA Classification:

Manufacturing:BAXTER-HYLAND Therapy Class:000125000 HEMOSTATICS
Generic Code:000000596 FACTOR VIII (ANTIHEMOPHL FCTR)
OTC/Legend:FEDERAL LEGEND AWP History:06/26/2001 \$1.2250 09/07/1997
\$0.9500 01/09/1992 \$0.9000

GAMMAGARD S/D 0.5 GM

NDC Number NDC: Drug File SourceESI Drug File National Drug File Mail Order Drug
File(ABQ) Active Only SearchClear Drug Name Drug Name: Drug File SourceESI Drug
File National Drug File Mail Order Drug File(ABQ) Active Only SearchClear
Search Results DrugGroupDrug NameNDCStrengthPkg SizeSource
IndicatorStatusDrugIndex

Records: 1 of 4

1GAMMAGARD S/D 0.5 GM VL W/ST009442620015000001.000SINGLEACTIVE0

Drug DetailMedication:00944262001 GAMMAGARD S/D 0.5 GM VL W/ST Formulary
Status:Formulary Formulary Policy:V/O - vol form/vol BBI Alternatives; Drug Class:01
CPC Indicator:Yes Category:

Gender Restriction: Age Minimum: Age Maximum: Maintenance Drug: Max Qty Retail:
Max Qty MO: Days Supply Retail: Days Supply MO: This is a summarization of limits
for this drug and does not contain all plan limitations.
For additional dispensing information view all Dispensing Limits.
To determine benefit specific limitations perform a Coverage Check.

Unit Dose:EA Strength:500000 Package Size:1.000 Unit Dose Package:No
Repackaged:No DESI:No Dosage Form:INJ GPI:BRAND Source Indicator:SINGLE-
SOURCE Status:ACTIVE Obsolete Date:12/31/9999 DEA Classification:

Manufacturing:BAXTER-HYLAND Therapy Class:000100000 IMMUNOLOGICALS
AND VACCINES Generic Code:000004186 IMMUNE GLOBULIN - IV
OTC/Legend:FEDERAL LEGEND
AWP History:06/26/2001 \$81.0000 07/19/1998 \$64.8000 01/09/1996 \$54.9200

GAMMAGARD S/D 2.5 GM

NDC Number NDC: Drug File SourceESI Drug File National Drug File Mail Order Drug
File(ABQ) Active Only SearchClear Drug Name Drug Name: Drug File SourceESI Drug
File National Drug File Mail Order Drug File(ABQ) Active Only SearchClear
Search Results DrugGroupDrug NameNDCStrengthPkg SizeSource
IndicatorStatusDrugIndex

Records: 3 of 4

3GAMMAGARD S/D 2.5 GM VL W/ST0094426200225000001.000MULTIACTIVE2

Drug DetailMedication:00944262002 GAMMAGARD S/D 2.5 GM VL W/ST Formulary
Status:Formulary Formulary Policy:V/O - vol form/vol BBI Alternatives: Drug Class:01
CPC Indicator:Yes Category:

Gender Restriction: Age Minimum: Age Maximum: Maintenance Drug: Max Qty Retail:
Max Qty MO: Days Supply Retail: Days Supply MO: This is a summarization of limits
for this drug and does not contain all plan limitations.
For additional dispensing information view all Dispensing Limits.
To determine benefit specific limitations perform a Coverage Check.

Unit Dose:EA Strength:2500000 Package Size:1.000 Unit Dose Package:No
Repackaged:No DESI:No Dosage Form:INJ GPI:BRAND Source Indicator:MULTI-
SOURCE Status:ACTIVE Obsolete Date:12/31/9999 DEA Classification:

Manufacturing:BAXTER-HYLAND Therapy Class:000100000 IMMUNOLOGICALS
AND VACCINES Generic Code:000004186 IMMUNE GLOBULIN - IV
OTC/Legend:FEDERAL LEGEND
AWP History:06/26/2001 \$298.1250 07/19/1998 \$217.5000 10/20/1996 \$184.2500

GAMMAGARD S/D 5 GM

NDC Number NDC: Drug File SourceESI Drug File National Drug File Mail Order Drug
File(ABQ) Active Only SearchClear Drug Name Drug Name: Drug File SourceESI Drug
File National Drug File Mail Order Drug File(ABQ) Active Only SearchClear
Search Results DrugGroupDrug NameNDCStrengthPkg SizeSource
IndicatorStatusDrugIndex

Records: 4 of 4

4GAMMAGARD S/D 5 GM VL W/SET0094426200350000001.000MULTIACTIVE3

Drug DetailMedication:00944262003 GAMMAGARD S/D 5 GM VL W/SET Formulary
Status:Formulary Formulary Policy:V/O - vol form/vol BBI Alternatives: Drug Class:01
CPC Indicator:Yes Category:

Gender Restriction: Age Minimum: Age Maximum: Maintenance Drug: Max Qty Retail:
Max Qty MO: Days Supply Retail: Days Supply MO: This is a summarization of limits
for this drug and does not contain all plan limitations.
For additional dispensing information view all Dispensing Limits.
To determine benefit specific limitations perform a Coverage Check.

Unit Dose:EA Strength:5000000 Package Size:1.000 Unit Dose Package:No
Repackaged:No DESI:No Dosage Form:INJ GPI:BRAND Source Indicator:MULTI-
SOURCE Status:ACTIVE Obsolete Date:12/31/9999 DEA Classification:

Manufacturing:BAXTER-HYLAND Therapy Class:000100000 IMMUNOLOGICALS
AND VACCINES Generic Code:000004186 IMMUNE GLOBULIN - IV
OTC/Legend:FEDERAL LEGEND
AWP History:06/26/2001 \$596.2500 07/19/1998 \$435.0000 10/20/1996 \$368.5000

GAMMAGARD S/D 10 GM

NDC Number NDC: Drug File SourceESI Drug File National Drug File Mail Order Drug
File(ABQ) Active Only SearchClear Drug Name Drug Name: Drug File SourceESI Drug
File National Drug File Mail Order Drug File(ABQ) Active Only SearchClear
Search Results DrugGroupDrug NameNDCStrengthPkg SizeSource
IndicatorStatusDrugIndex

Records: 2 of 4

2GAMMAGARD S/D 10 GM VL W/ST00944262004100000001.000MULTIACTIVE1

Drug DetailMedication:00944262004 GAMMAGARD S/D 10 GM VL W/ST Formulary
Status:Formulary Formulary Policy:V/O - vol form/vol BBI Alternatives: Drug Class:01
CPC Indicator:Yes Category:

Gender Restriction: Age Minimum: Age Maximum: Maintenance Drug: Max Qty Retail:
Max Qty MO: Days Supply Retail: Days Supply MO: This is a summarization of limits
for this drug and does not contain all plan limitations.

For additional dispensing information view all Dispensing Limits.

To determine benefit specific limitations perform a Coverage Check.

Unit Dose:EA Strength:10000000 Package Size:1.000 Unit Dose Package:No
Repackaged:No DESI:No Dosage Form:INJ GPL:BRAND Source Indicator:MULTI-
SOURCE Status:ACTIVE Obsolete Date:12/31/9999 DEA Classification:

Manufacturing:BAXTER-HYLAND Therapy Class:000100000 IMMUNOLOGICALS
AND VACCINES Generic Code:000004186 IMMUNE GLOBULIN - IV
OTC/Legend:FEDERAL LEGEND
AWP History:06/26/2001 \$1,192.5000 07/19/1998 \$870.0000 10/20/1996 \$737.0000

DECLARATION OF GREG HAMILTON

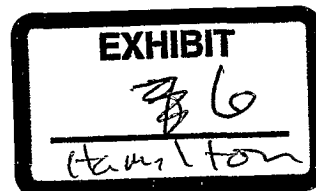
I, Greg Hamilton, hereby declare as follows:

1. I am one of the Relators in United States ex rel Sun et al. v. Baxter. If called upon to do so, I could and would testify competently to the following based upon firsthand knowledge.

2. I have worked for pharmaceutical manufacturers and pharmacy benefit managers for over twenty years. During this time I have had extensive contact with Baxter's senior staff as a customer, a colleague and as a competitor. This contact has included numerous meetings with Larry Guiheen (the President of Baxter BioScience who is referred to in ¶45 of the Complaint) as well as his superior, Peter O'Malley. Those meetings specifically concerned the pricing of several of the Baxter products discussed in this Complaint.

3. From 2001 – 2004 I was the Senior Director of Strategic Sales and Planning at Specialty Distribution Services for Express Scripts, the Pharmacy Benefit Manager. From 2004 – 2006 I was the Vice-President of the Curascript Bleeding Disorder Program. (CuraScript is an operating division of Express Scripts.)

4. While serving in these positions I frequently met with Baxter's senior management to discuss the market for hemophilia products. Because the market for hemophilia products is extremely lucrative, national hemophilia meetings were typically attended by the leadership from concerned pharmaceutical companies and PBMs. At these conferences I would hold scheduled meetings with Larry Guiheen, who was then Baxter's Vice-President for North America, as well as his boss, Peter O'Malley. I also made at least three trips to Baxter's Deerfield, Illinois, offices to meet with Baxter managers to discuss pricing. At least one of those meetings took place at the request of Peter O'Malley, who was either Baxter's President of North American operations, or vice President of Sales. O'Malley asked me to meet with Baxter's contracting



staff and describe how to price products for Government customers, and how pricing for the 340B program operates.

5. I had at least three such meetings with Baxter to discuss pricing in barely a year – August 8, 2002, February 3, 2003, and September 26, 2003.

6. During one such meeting I had a long discussion with Larry Guiheen about Baxter's pricing of Advate (Baxter's version of Recombinant Factor VIII.) Within a few months of this meeting Baxter changed its price for Advate to within a penny of what I had recommended.

7. In addition to being a major customer of Baxter's through my work with Express Scripts and Curascript, I also interacted with Baxter's pricing managers as a competitor of Baxter's when I worked for Bayer. While working for Bayer, I served with Baxter executive Peter O'Malley on the Plasma Protein and Therapeutics Association's Reimbursement Committee, and Drug Recall Committee, and had numerous discussions with him about pricing strategies.

8. In addition to my direct discussions with Baxter managers, I learned of Baxter's pricing and some of the specific acts alleged in ¶¶ 36-40 of our complaint while trying to help Kay Morgan, Manager of Editorial Services for First Data Bank. In May or early June of 2001 Kay Morgan called and asked my opinion about why Baxter was refusing to provide its WAC for Recombinate. She told me that Baxter sent a letter saying that their list price was \$1.31 and they wanted their AWP reported as \$1.31. She told me that when she asked Baxter for the WAC, Baxter merely repeated that the list price for Recombinate was \$1.31 and that they wanted the AWP reported as \$1.31. Morgan told me that FDB was so mad that they threatened not to publish any information at all.

9. Morgan told me that she, her boss, and the FDB legal department wrote a letter to Baxter threatening that FDB would refuse to publish the AWP information.

10. Morgan asked me what I thought Baxter was trying to accomplish by this. I told her that I thought Baxter's goal was to establish an AWP was attractive to the distributors, but to still be able to deny to the hemophilia community that it was Baxter's fault for the high AWP, and to blame FDB.

11. Throughout my years in the industry I was able to achieve a high level of understanding of Baxter's pricing structure from direct discussions with Baxter's senior management, as well as through the information given me by FDB.

12. The Market Research Bureau's PLASMA FRACTIONS MARKET IN THE US report is an annual publication for the Plasma industry. This industry is a classic oligopoly consisting of less than 7 manufacturers.

13. The Market Research Bureau was founded and is operated by Patrick Robert, a former Bayer employee and colleague. He left Bayer and created MRB in the mid 90's to provide the Plasma industry with a much needed data source. The standard source for the drug industry is IMS Health, however they do not audit/cover plasma products.

14. On September 13, 2009 I called The Market Research Bureau and spoke with Cindy Lynn, Patrick Robert's secretary. She told me that a single issue of this publication costs \$16,000, and that there are fewer than 20 subscribers, including manufacturers, a few specialty pharmacies, and a few 340d entities. She also told me that they do not sell or give any of their reports to university libraries or public libraries.

I declare under penalty of perjury under the laws of the state of Illinois that the foregoing is true and correct. Executed this 15th day of September, 2009, at Algonquin, Illinois.

/s/ Greg Hamilon

Greg Hamilton

CERTIFICATE OF SERVICE

I hereby certify that I, Mark Kleiman, an attorney, caused a true and correct copy of the foregoing, **MEMORANDUM IN OPPOSITION TO BAXTER INTERNATIONAL INC.'S MOTION TO DISMISS RELATORS' COMPLAINT**, to be delivered to all counsel of record by electronic service on September 15, 2009, for the posting and notification to all parties.

By: /s/ Mark Allen Kleiman

MARK ALLEN KLEIMAN
California State Bar No. 115959
2907 Stanford Avenue
Venice, CA 90292
310-306-8094
310-306-8491 (fax)

Received Fax : Jun 23 2005 10:03AM Fax Station : MARK KLEIMAN

FROM :

PHONE NO. : 303 837 892

Jun. 23 2005 11:58AM P3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
U.S. DISTRICT COURT
DISTRICT OF COLORADO
2005 JUN 14 PM 12:18
GREGORY C. LANGHAM
CLERK

BY _____ DEP. CLK

Civil Action No. 05-cv-00736 (PSF) (MJW)

[UNDER SEAL],

Relators,

v.

[UNDER SEAL],

Defendants.

AMENDED COMPLAINT FOR DAMAGES UNDER THE FEDERAL
AND VARIOUS STATE FALSE CLAIMS ACTS

FILED IN CAMERA AND UNDER SEAL PURSUANT TO 31 U.S.C. §3730(b)(2)

MARK ALLEN KLEIMAN
California State Bar No. 115919
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310-442-4820
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ATTORNEYS FOR RELATORS



IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. **05-cv-00736 (PSF) (MJW)**

UNITED STATES OF AMERICA ex rel LINNETTE SUN and GREG HAMILTON, Relators,

STATE of ARKANSAS ex rel LINNETTE SUN and GREG HAMILTON, Relators,
STATE of CALIFORNIA ex rel LINNETTE SUN and GREG HAMILTON, Relators,
STATE of DELAWARE ex rel LINNETTE SUN and GREG HAMILTON, Relators,

DISTRICT of COLUMBIA ex rel LINNETTE SUN and GREG HAMILTON, Relators,
STATE of FLORIDA ex rel LINNETTE SUN and GREG HAMILTON, Relators,
STATE of HAWAII ex rel LINNETTE SUN and GREG HAMILTON, Relators,

STATE of ILLINOIS ex rel LINNETTE SUN and GREG HAMILTON, Relators,
STATE of LOUISIANA ex rel LINNETTE SUN and GREG HAMILTON, Relators,
COMMONWEALTH of MASSACHUSETTS ex rel Linnette Sun, and Greg Hamilton,
Relators,

STATE of NEW MEXICO ex rel LINNETTE SUN and GREG HAMILTON, Relators,
STATE of NEVADA ex rel LINNETTE SUN and GREG HAMILTON, Relators,
STATE of TENNESSEE ex rel LINNETTE SUN and GREG HAMILTON, Relators,

STATE of TEXAS ex rel LINNETTE SUN and GREG HAMILTON, Relators,
STATE of UTAH ex rel LINNETTE SUN and GREG HAMILTON, Relators,
STATE of VIRGINIA ex rel LINNETTE SUN and GREG HAMILTON, Relators,
v.

BAXTER HEMOGLOBIN THERAPEUTICS; BAXTER INTERNATIONAL, INC. and Does
1-100, whose true names are unknown

Defendants

**AMENDED COMPLAINT FOR DAMAGES UNDER THE FEDERAL
AND VARIOUS STATE FALSE CLAIMS ACTS**

FILED IN CAMERA AND UNDER SEAL PURSUANT TO 31 U.S.C. §3730(b)(2)

Relators, LINNETTE SUN and GREG HAMILTON, bring this action under the False Claims Act, as amended, 31 U.S.C. §3729 et. seq., as well as various state statutes, allege as follows:

INTRODUCTION

1. This is a *qui tam* action brought by LINNETTE SUN and GREG HAMILTON on behalf of the United States and various States to recover penalties and damages arising from fraudulent and illegal practices of Baxter Hemoglobin Therapeutics, a division of Defendant Baxter International, Inc. (hereinafter "Baxter"). Baxter makes a variety of specialized pharmaceutical, hematological, and infusion products, known in the industry as "biologics." Government programs reimburse healthcare providers who purchase these products based upon the published or posted Average Wholesale Price ("AWP"). Manufacturers, such as Baxter, are to report an accurate Wholesale Acquisition Costs ("WAC") to the database that calculates and publishes the AWP based upon the reported WAC, First DataBank, Inc. ("FDB").

2. It is known throughout the industry and known to Baxter that FDB calculates this mark-up. Baxter controlled the published AWP by misreporting the WAC. Baxter provides to the States, directly and through submission of reports to drug pricing publishing services, what purports to be genuine pricing data for its products. This information is typically identified as the "Wholesale Acquisition Cost" ("WAC") and/or the "Average Wholesale Price" ("AWP") of particular products. Baxter intends the WAC to be understood by the state Medicaid agencies as the average price paid by a wholesaler to a manufacturer for a given product. Baxter intends the AWP to be understood by the state Medicaid agencies and other payors as the average

price charged by a drug wholesaler to its commercial customers for a given product.

3. The drug pricing publishing services in turn compile, publish and distribute compendia of such pricing information for each defendant's products. The drug pricing publishing services purport not to investigate the accuracy of the information provided by the manufacturers, and disclaim responsibility for their accuracy.

4. Baxter refused to report an accurate WAC. The vast bulk of Baxter's products at issue here are distributed by a class of business called non-charge back wholesalers. Instead, Baxter reported a "list sales price" which bore no relationship to the price charged in the marketplace to the actual wholesalers, but which was an inflated price charged to very few customers that distributed less than one percent of these products..

5. Baxter thus manipulated the AWP, knowing that health care providers who were being reimbursed based on AWP were indifferent to the cost of purchasing the drug, but instead focused on the "spread"—as it is known in the industry—between the cost and the AWP-based reimbursement. Because Baxter's spread was larger than competitors, its products were more attractive to these customers, and it could maximize its revenue.

6. States rely upon FDB's published AWP to reimburse providers, and assume that the published AWP is a reasonable indicator of the price paid for the drug. However, because Baxter falsely reported WAC to inflate the AWP and the spread, Baxter deceived the government, which then overpaid for the biologics at issue here.

//

THE PARTIES

7. Relator Linnette Sun is a citizen of the United States and a resident of the State of California. She has been a pricing and reimbursement specialist for ten years, working for Merck, Johnson & Johnson, & Amgen. She was then employed by Baxter as Director of Medical Outcomes Research and Economics, and as such was a pricing specialist there for more than a year, June 24, 2002 – July 22, 2003. After telling her superiors and others at Baxter that she strongly opposed Baxter's practices and thought them to be fraudulent, she was fired.

8. Relator Greg Hamilton is a citizen of the United States and a resident of the State of Illinois. He is currently Vice President of the Bleeding Disorders Program for CuraScript, a Division of Express Scripts, Inc. He has over 30 years experience working in the pharmaceutical industry, including 13 years with Bayer. He is known as a pricing and reimbursement specialist and had advised pharmaceutical companies on the pricing of products, including biologics. He is aware of the pricing structure Baxter used, specifically, the correspondence between Baxter and FDB regarding Baxter's reporting of the improper WAC. Mr. Hamilton has an MBA from Illinois Institute of Technology.

9. Defendant Baxter International, Inc., Baxter Hemoglobin Therapeutics has its offices at 2545 Central Av., Suite FD1, in Boulder, Colorado and at One Baxter Parkway in Deerfield, Illinois. It is a division of Baxter International, Inc., a Delaware corporation, which is a global pharmaceutical company doing business in this judicial district with its principal executive offices at One Baxter Parkway in Deerfield, Illinois.

//

JURISDICTION AND VENUE

10. This is a civil action arising under the laws of the United States, and specifically, 31 U.S.C. §3730, the “False Claims Act.” Therefore, this Court has jurisdiction over this action pursuant to 31 U.S.C. §3732 (a) and (b). Supplemental jurisdiction for Counts 5-22 arises under 28 U.S.C. §§1367, since these claims are so related to the federal claims that they form part of the same case or controversy under Article III of the U.S. Constitution.

11. Venue is proper in this district pursuant to 31 U.S.C. §3732 (a) because Defendant Baxter transacts business in this district.

FEDERAL PROGRAMS HARMED BY DEFENDANTS’

FRAUDULENT AND ILLEGAL PRACTICES

MEDICARE AND MEDICAID

12. HHS, through its subsidiary entities—first the Health Care Financing Administration (HCFA) and now the Center for Medicare and Medicaid Services (CMS) — administers the Medicare program, which is a system of health insurance for the aged (i.e., those over the age of 65 years) and disabled created under Title XVIII of the Social Security Act, 42 U.S.C. § 1395, *et seq.* The Medicare program is comprised of two “Parts.” Part B of the Medicare program authorized payment for certain drugs when a Medicare beneficiary must either (a) have the drugs administered in a physician’s office, or (b) use a Medicare-approved mechanical aid or device (known as durable medical equipment) in order to receive the drugs at home. To assist in the administration of Medicare Part B, CMS contracts with Medicare carriers, //

or insurance companies that provide a variety of services, including processing and paying Part B

claims and auditing cost reports.

13. Through CMS, HHS also administers the Medicaid Program, which provides health care benefits for certain groups, including the poor and the disabled, and which is funded in part from federal funds and in part by the State where the facility is located. 42 U.S.C.A. § 1396 *et seq.* and each State's plan for medical assistance approved by the United States Secretary of Health and Human Services (the "Secretary") and adopted by each State. The United States participates in each State's Medicaid by providing a federal contribution to funding the program. Those contributions vary based upon each State's per capita income, and range fifty percent, in the case of Colorado, for example, to 77.08% for Mississippi.

RAILROAD RETIREMENT MEDICARE PROGRAM

14. The Railroad Retirement Medicare program, is authorized by the Railroad Retirement Act of 1974, 45 U.S.C. §§231 *et seq.* It is administered through the United States Railroad Retirement Board, "RRB" and furnishes Medicare coverage to retired railroad employees.

INDIAN HEALTH SERVICE

15. The Indian Health Service is responsible for providing comprehensive health services to more than 1,400,000 Native Americans. It is administered by the Department of Health and Human Services pursuant to 42 U.S.C. § 2002, *et seq.* The statute authorizes the Secretary to enter into contracts with independent providers to furnish health services to Native Americans whenever the Secretary determines that independent providers can better meet a population's need.

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FEDERAL EMPLOYEE HEALTH BENEFIT PLANS

16. The Federal Employees Health Benefits Program (FEHBP) is administered by the Office of Personnel Management ("OPM") pursuant to 5 U.S.C. §§ 8901, *et seq.* and provides health care coverage to federal employees and their dependents.

TRI-CARE

17. The Tri-Care program, formerly CHAMPUS, is administered by the United States Department of Defense through its component agency, CHAMPUS, under the authority of 10 U.S.C. §§ 1071-1106, and provides for care in civilian facilities for members of the Uniformed Services and their dependents.

VETERAN'S ADMINISTRATION

18. Pursuant to 38 U.S.C.A. § 8126, and the regulations based thereon, and contracts the Veteran's administration had with manufacturers, drugs are furnished to the Veterans' Administration ("VA") by drug manufacturers.

§340B PROGRAM

19. In 1992 Congress enacted §340B of the Public Health Service Act. This law requires pharmaceutical manufacturers, including defendants herein, to provide a statutorily defined discount on outpatient drugs sold to institutions serving low-income communities, thereby allowing public hospitals, community health centers, and other entities to buy drugs for their patients at a reduced rate.

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BACKGROUND

20. There are approximately 65,000 different drug products in the United States market, including different doses of the same drug. Baxter manufactures and/or distributes (and thus sets the price) for the following drugs and biologics:

Advate	Bebulin	HemophilM	Recombinate
Aralast	FeibaH	Propelex	
Albumin	Gammagard S/D	Propelex LT	

Baxter's products are dispensed to patients by or through different types of medical providers including, *inter alia*, physicians who administer drugs in an office, home infusion pharmacies, retail pharmacies, and other medical providers.

21. States routinely cover out-patient prescription drugs as part of their Medicaid programs. Most States reimburse providers for those drugs based upon a percentage of the AWP, usually 85% of the AWP. Medicare reimburse providers who furnish covered drugs to beneficiaries the lower of the billed charge or 95% of the AWP pursuant to 42 CFR §405.17. Baxter's biologics are covered by Medicaid, Medicare and other government programs.

22. During all times material to this complaint, State Medicaid programs, and numerous other public and private programs, obtained AWP pricing information directly from FDB. FDB is a wholly-owned subsidiary of the Hearst Corporation, which, among other things, gathers prescription drug information, including pricing and AWP. FDB publishes and distributes this information as a database which is regularly maintained.

23. Government and much commercial private reimbursement is based upon AWP published by FDB. However, there are several other pharmaceutical industry compendia that periodically compile, publish and distribute AWP in printed and electronic media. These

compendia include the *Drug Topics Red Book* (the “*Red Book*”), the *Annual Director of Pharmaceuticals and Essential Director of Pharmaceuticals* (the “*Blue Book*”), and Medi-Span’s *Master Drug Database (MediSpan)*.

24. Prior to May of 2000 FDB’s misreporting of price information was suspected or known by state Medicaid agencies. However, in May of 2000 FDB entered into an agreement with the Department of Justice and various states to stop reporting AWP’s published by the manufacturers and to instead report them on the basis of market prices. FDB subsequently based its reports on surveys of wholesalers. The states were thus lulled into a false sense of security about the integrity of subsequent AWP reporting.

25. Medicaid, Medicare, and all other systems which base reimbursement rates for drugs on the published AWP rely upon the accuracy of the AWP, and, in turn, depend upon the honesty and accuracy of Baxter and other drug manufacturers in reporting WAC to FDB. As noted above, for biologics, FDB posts AWP by multiplying the reported WAC by 1.25. Manufacturers easily determine FDB’s mark up by comparing the difference between the reported WAC and the published AWP, and are accordingly aware of what FDB’s published AWP will be when they report WAC to FDB.

26. Providers regularly submit claims for reimbursement seeking payment for Baxter’s products from Medicare, Medicaid, and from other federal payors. Manufacturers, including Baxter, were and are fully aware that these payors also rely on FDB’s published reports of AWP to determine their reimbursement.

27. All pharmaceutical products except biologics are normally distributed through charge-back wholesalers. These wholesalers are Bergen Brunswig Drug Company, McKesson Drug Company, Cardinal Health, AmeriSource Health Corporation. However, manufacturers’

sales of biologics to charge-back wholesalers comprise less than 1% of the wholesale market for manufacturers of these specialized products.

28. Instead, the vast majority of biologics, such as the products Defendants manufactured, were typically distributed to providers by non-charge back wholesalers. These wholesalers include, but are not limited to: Chapin Medical, FFF Enterprises, CT International, ActSys Medical Inc., Williams Medical, Davis Enterprises, Paragon Scientific Corp., ASD Specialty Healthcare, IDP, Inc., Blood Diagnostics Inc., National Specialty Services, Florida Infusion, National Hospital Specialties, Alpine Biologics, Atlantic Business Organization, Health Coalition, J-Mark Enterprise, BioCare, BioScience, Western Medical Services, Davis Enterprises, Biomed Plus, Genesis Bio-Pharmaceuticals, Acysis, Whitmire Distribution Corp., Adam Diagnostic Laboratories, Alternate Site Distributors, Besse Medical Supply, Bindley Western, Bio Test, Bryan Biologicals, Inc., Capital Wholesale Drug, Casad Surgical Pharmacy, Cummumed, Dakota Drug, Diagnostic Marketing Corp, F D Titus & Sons, Inc., F. Dohmen Co., First Choice Medical Inc., General Drug Company, General Inj. & Vaccines, Inc., H D Smith Wholesale, Henry Schein Corp., Henry Schein Surgical, Immucor, Inc., Int'l Med Supply, J E Gold & Co, Martin Surgical Supply, Medical Blood Services, Medical Mart Inc, Medsource Corp, Metro Medical Supply Inc., Micro Bio Medics, Morris and Dickson, Mullen & Haynes, National Hospital Specialties, NSS, Inc., Ohio Valley Clarksburg Inc., Organon Teknika Corp, Parks Inc., PSS, Quala Med Inc., R Weinstein Pharmaceutical, Roane Barker, Scientific Supply Company, Triad Medical Inc., Walsh-Lumpkin, Accord Clinical Labs, Alternate Site Distributors, Bellegrave Medical Supply, Bensons Surgical Supply Co., British Marketing Enterprises, Expert - Med Inc., Gas Medical, General Drug Company, Grove Way Medical Supply, Health Coalition, Physician Sales & Service, R Medical Supply, Summit Medical Supplies, Total Health Products, A. J. Buck & Sons Inc., Alternate Site Distributors, C F

Anderson Comp, Inc., Center Medical Supply, Central Supply, Emjay Medical Supplies Corp, Gamma Biologicals, Hawkeye Medical Supply, Interstate Blood Bank, Lake Erie Medical & Surgical, Medical Supply Corp of N.J., Paragon Scientific Corp., Ransdell Surgical Inc., Savoy Medical Supply Co., Shenandoah Medical Supply, Suncoast Surgical Supply, Tri State Physicians Supplies, United Medical Supply, Arizona Blood Services, Bio Care, Bio Med Plus, Blood Center of SE Wisconsin, Health Coalition, Inc., and Mediq Corporation.

29. The true wholesalers which distribute the bulk of the biologics for Baxter as well as other manufacturers, are these non-charge back wholesalers. This has been reported by the Marketing Research Bureau Inc. in its study, *The Plasma Fractions Market in the United States 2001*. This study indicates that the first-tier of the non-charge back wholesalers distribute the overwhelming amount bulk of biologics, and that the remaining are sold directly to providers such as home health agencies or home health systems.

DEFENDANTS' ILLEGAL SCHEMES

Baxter has used the following schemes to cause state Medicaid programs and other payors to pay false claims:

WAC FALSIFICATION

30. In the case of biologics, Baxter employed what is known in the pharmaceutical industry as "class of trade pricing." Baxter sold the bulk of its biologics directly to providers. e.g., home health agencies and home health systems. Baxter offered the lowest prices to these providers, Baxter offered the next lowest prices to non-charge back wholesalers. These sales, varying by product, comprise up to 40% of Baxter's total sales of the products. At times, Baxter also offered its lowest prices to the non-charge back wholesalers as a marketing incentive. to

move product. The charge-back wholesalers, to which Baxter charged the highest prices, comprise less than 1% of Baxter's sales for the biologicals..

31. Although the charge-back wholesalers purchased less than 1% of the biologicals, Baxter reported to FDB that the high prices charged to this tiny market segment was its WAC. Baxter did this with the knowledge that FDB, would, in turn, use this information to calculate AWP, which would then be reported to state and federal health care programs described herein. Since the price charged to less than 1% of its market did not affect sales, Baxter could use it to manipulate the reimbursement system since the published AWP had no correlation to the price charged to the wholesalers that distributed nearly all of Baxter's biologicals.

32. The effect of Baxter's false reporting was that Baxter illegally increased the profitability, or spread, of these drugs to health care providers and pharmacies, thus giving a financial incentive for their selection and use. That is, if the spread for Baxter's product is greater than the spread for competing products, the provider will profit more by using Baxter's product. The only way to increase the spread is to either reduce the acquisition cost to the provider, or to inflate the reported AWP Medicare and Medicaid rely upon. Since lowering the sales price to providers would decrease Baxter's income, Baxter preferred instead to increase the spread by falsely inflating the AWP. Consequently, since Baxter sells the biologicals to providers at considerably less than the reported AWP, there is a substantial spread between what Medicare and Medicaid and other payors will pay, and there is an exorbitant amount of profit the provider can make on the sale of the product.

33. In fact, Baxter knew that the actual amounts charged to the non-charge back wholesalers distributors, as well as providers and others for their products, was not publicly available, because it was proprietary pricing information. Baxter kept this information highly

confidential and secret to maximize its ability to maintain market share by providing the greatest reimbursement spread to these customers.

34. Baxter increased its revenue not only by gaining more market share by beating out competitors with a more attractive spread, but also by generating profit from increasing its sale price to the providers. So long as the providers made a profit from purchasing Baxter's products greater than the profit offered by a competitor's spread, they would be willing pay more for the product.

35. Baxter knew it could directly control and fabricate the AWP for their products by reporting to FDB the highest prices charged for the biologics, those charged to charge-back wholesalers.

36. For example, [Baxter has reported to FDB that the WAC for Recombinate is \$1.30 per unit, and FDB] has accordingly published an AWP of \$1.6250 per unit. When a Medicare beneficiary receives a drug which is covered by Part B of Medicare, Medicare reimburses providers 80% of the allowable cost, which is 95% of the AWP. Thus, if the AWP for a drug is \$1.6250, the allowable cost is 95% of that, or \$1.548, and Medicare pays 80% of that sum, or \$1.235. Recombinate has been sold to providers for \$0.89 (or even less), making the spread, or the difference between the actual acquisition cost of \$0.89 and the Medicare payment of \$1.235 equals \$0.345 In addition, there is a 20% copay of 30.8¢ per unit. This nearly 65.3¢ per unit spread represents gross margin for the provider. Since the average patient consume approximately 125,000 units per year, this is \$81,625 in gross margin per patient per year to the provider.

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37. In the case of Medicaid reimbursement, at 85% of AWP, or \$1.381 per unit, the difference between that and the actual acquisition cost of \$0.89 is \$0.491. The nearly 50-cent per unit spread is also gross margin for the provider.

38. Baxter falsely reported WAC by claiming it was reporting a "list sales price." Baxter's Mike Bradley, was Senior Director of National Account Economics, and was responsible for pricing and reporting Baxter's pricing to various databases. In approximately October 2001, Bradley told Relator Linette Sun that Baxter has repeatedly falsely described its WAC to FDB by reporting a cost described as "list sale price.", knowing that FDB would apply a 125% multiplier to estimate AWP. Sun was informed that since this improved the spread between AWP and the prices actually charged to physicians or other providers, this allowed Baxter to acquire greater market share. Bradley further told her that Baxter had known of this for years, but that they expected to shift the blame to FDB. Baxter management was adamant that it could not hit its sales targets without these incentives to the providers.

39. According to knowledge obtained by Relator Greg Hamilton, FDB refused to accept Baxter's "list sales price," and instead submitted a letter stating that their list price was \$1.31 and that they wanted their AWP to be described as \$1.31. Baxter did this knowing that FDB would (as in fact it did) ask what the WAC was. Baxter had also informed FDB the amounts Baxter wanted FDB to publish as the list price and AWP. FDB again told Baxter it had to provide WAC, and that if it continued to refuse to provide WAC, FDB would have to consider the list price provided as the WAC. Again, Baxter refused to provide any other number than "list sales price," and also refused to denote the "list sales price" as WAC.

40. FDB then used Baxter's "list sales price," and applied the 1.25 multiplier FDB obtained by researching the mark-up wholesalers applied.

41. Shortly thereafter Ms. Sun reviewed the FDB materials and was surprised to see the greatly inflated AWP. She promptly reported this to Nick Poulios who was, at the time, Baxter's Director of Medical Outcomes Research and Economics, who told her to bring this up at a meeting that was scheduled to discuss Baxter's pricing practices. This meeting was attended by Bradley, Poulios, as well as Mike Baldrige, Director of Planning, and Jill Kadam, Director of National Accounts Marketing. Bradley again acknowledged his awareness of the problem and admitted that this actually became a better financial arrangement for Baxter since it increased reimbursement rates. Bradley repeated that Baxter knew this all along, and that this benefitted Baxter. Bradley also tried to convince Sun that FDB was a little used information source.

42. After this meeting Ms. Sun contacted FDB directly and received an email from a sales manager who confirmed that FDB reports were purchased by the United States and by each State's government, and that the database was used by over 80% the insurance companies.

43. In July, 2002, Ms. Sun learned of a pricing report for Advate prepared by Simon Kucher & Partners, an international marketing consulting firm. Kucher & Partners recommended that to secure market share for Baxter had spent approximately \$750,000 for a marketing study for this new product. In order to secure market share Baxter decided to sell Advate for \$0.99 per dose, but to report an AWP of \$1.60. Ms. Sun voiced her concern to Nick Poulios, John Park, and the VP of Global Marketing. When she warned that Baxter could get into trouble John Park joked that it was all an "innocent" mistake.

44. In approximately October, 2002, Ms. Sun again voiced her concerns to Nick Poulios, who told her that all Marketing Management had known of this for years and had no intention of correcting it because, if they got in trouble with the government, they could blame FDB.

45. In April, 2003, Ms. Sun and Poullos informed Larry Guihinn, the President of Baxter BioScience of the inflated AWP and warned that this could get Baxter in trouble with the government. Guihinn stated that Bradley had told him that Ms. Sun was researching the report-reporting problem. Guihinn specifically forbade Ms. Sun from doing any further research, and specifically forbade Ms. Sun or others from contacting FDB about this.

46. In the Spring of 2003 the Global Marketing group had a pricing meeting (called a margin analysis meeting) to discuss new drug pricing for one of Baxter's products, Advate. Ms. Sun noticed that the spread was between three and five times greater on Baxter's products than it was in the industry in general. Ms. Sun warned Poullos, Bradley, and Product Director Regina O'Hara that the spread was too great, before she was silenced by Poullos. The meeting participants were given a written margin analysis writeup. After the participants indicated their preferences for how to set the WAC, the AWP, and the spread, the participants were ordered to destroy the margin analysis report. Guihinn and John Park, Baxter's Global Product Director, commented that Baxter Management would go to jail if the government ever discovered this material.

47. In approximately July 2003, at a meeting with Baxter Human Resources personnel and Baxter management, to review Ms. Sun's performance (called a Talent Review Meeting) Poullos told Sun that Jim Howard, a vice-president of North American marketing said that Ms. Sun should visit Baxter customers so that she would understand that sales depended on the spread..

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48. Based upon internal documents she studied while working at Baxter, and discussions Ms. Sun had with pricing specialists and senior marketing executives, she learned that Baxter has engaged in similar falsification of WAC with respect to its other pharmaceutical, hematological, and biological products.

BEST PRICE AND STARK VIOLATIONS

49. Baxter had a marketing practice of offering "Volume Committed Contracts" to institutional health care providers (such as hospitals, nursing homes, and home health agencies).

50. The Volume Committed Contracts offered such providers discounts of between 50 – 90% off of the purchase price, depending upon the amount of market share the provider could shift in Baxter's direction. In an April, 2003 meeting to discuss pricing policy for Advate and Recombinate, Bradley declared that the U.S. marketing team was not worried about losing market share to competitors because they had Volume Committed Contracts for most of their products which would be in force for the next three years.

51. Baxter's policy was to be extremely secretive about these contracts because of their illegal nature. When Ms. Sun questioned Bradley about the legality of the Volume Committed Contracts, Bradley replied that Baxter's legal department would clean up the contracts' language, but that the use of the inducements contained in these contracts to control market share would continue unabated. Ms. Sun had the opportunity to see only one such contract, which was passed from hand to hand at a pricing meeting in April 2003. The contract was read by Relator, Poullos, and John Park (Defendant's Global Products Director). Bradley then demanded the contract back. Neither Ms. Sun nor any of the other executives were permitted to keep a copy of this contract.

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STARK ACT VIOLATIONS

52. The discounts Baxter offered to institutional providers under the Volume Committed Contracts also violated Stark II, 42 U.S. § 1395nn which prohibits compensation arrangements such as Volume Committed Contracts between entities such as Baxter, which furnishes goods or services, and health care providers, which are in a position to order or refer patients for the receipt of such goods or services.

BAXTER'S CONDUCT VIOLATED THE FEDERAL MEDICAID PROGRAM'S REBATE AND BEST PRICE REPORTING REQUIREMENT

53. The Medicaid program, established by Title XIX of the Social Security Act, is a uniquely cooperative federal-state program that provides medical assistance to certain low income individuals. See 42 U.S.C. §§ 1396 - 1396v.

54. Congress passed the Medicaid Best Prices Statute, 42 U.S.C. § 1396r-8, as part of the Omnibus Budget Reconciliation Act of 1990. Under that statute, a drug manufacturer must enter into a Rebate Agreement with the Secretary in order for federal matching funds to be made available for that manufacturer's covered outpatient drugs. 42 U.S.C. § 1396r-8(a)(1).

55. The Rebate Agreement provides that the Secretary enters the agreement "on behalf of the Department of Health and Human Services and all States and the District of Columbia (except to the extent they have in force an Individual State Agreement)." (Rebate Agreement at Preamble.) Upon entering a Rebate Agreement with the Secretary, the manufacturer must pay a quarterly rebate directly to each participating state based on all of the manufacturer's drugs purchased by that state pursuant to its Medicaid plan during that quarter.

56. For single source or innovator multiple source drugs, the rebate due on each unit paid for under the state plan is the difference between the average manufacturer price (“AMP”)¹ and the manufacturer’s best price, defined as the lowest price available from the manufacturer to any private purchaser or governmental entity (with certain exclusions) within the United States, or 15.1% of AMP, whichever is greater. 42 U.S.C. § 1396r-8(c)(1), (2). For multiple source non-innovator drugs, the rebate is 11% of AMP. 42 U.S.C. § 1396r-8(c)(3). Each state must agree to cover all of the manufacturer’s covered outpatient drugs unless the state complies with one of several statutory provisions allowing it to exclude or restrict coverage. 42 U.S.C. §§ 1396a(a)(54), 1396r-8(d). Any rebate amounts received by the state must be offset against the state’s Medicaid expenditures that quarter for purposes of calculating the matching federal financial participation. 42 U.S.C. § 1396r-8(b)(1)(B).

57. States may enter directly into Rebate Agreements with drug manufacturers as authorized by the Secretary. 42 U.S.C. § 1396r-8(a)(1). To date, the Secretary has approved supplemental drug Rebate Agreements in at least twenty states. States may also control their Medicaid drug costs and coverage by establishing prior authorization programs, 42 U.S.C. § 1396r-8(d)(1)(A), or by creating drug formularies, 42 U.S.C. § 1396r-8(d)(1)(B)(iv). Though not part of the rebate statute, states are also permitted to set payment rates with respect to covered drugs. See 42 U.S.C. § 1396(a)(30); 42 C.F.R. 447.331-447.333.

58. Drug manufacturers are required under the rebate statute and agreement to calculate and report their AMPs and best prices to the Secretary on a quarterly basis. 42 U.S.C. §

¹ “The term ‘average manufacturer price’ means, with respect to a covered outpatient drug of a manufacturer for a rebate period, the average price paid to the manufacturer for the drug in the United States by wholesalers for drugs distributed to the retail pharmacy class of trade, after deducting customary prompt pay discounts.” 42 U.S.C. § 1396r-8(k)(1).

1396r-8(b)(3)(A)(i); Rebate Agreement at § II(e). Any information provided by a manufacturer or wholesaler under the rebate statute is confidential and “shall not be disclosed by the Secretary or a State agency . . . except as the Secretary determines to be necessary to carry out this section.”

42 U.S.C. § 1396r- 8(b)(3)(D); Rebate Agreement at § VII. States are required to report their total Medicaid drug utilization to each manufacturer and the Secretary sixty days after the end of the rebate quarter.⁴ 42 U.S.C. § 1396r-8(b)(2)(A). Using the manufacturer pricing data, the Centers for Medicare & Medicaid Services (“CMS”) computes the unit rebate amount (“URA”) “to which the Medicaid utilization information may be applied by States in invoicing the Manufacturer for the rebate payment due.” Rebate Agreement at § I(dd).

59. The Secretary may survey wholesalers and manufacturers to verify reported AMPs and best prices, 42 U.S.C. § 1396r-8(b)(3)(B), and may audit manufacturer calculations of AMP and best price, Rebate Agreement at § III(c). The Secretary may impose civil money penalties on manufacturers that either fail to timely report their pricing information or submit false information to the Secretary. 42 U.S.C. § 1396r-8(b)(3)(C); Rebate Agreement at §§ III, IV. Section 1396r-8(b)(3)(C)(ii) also provides that any civil money penalties imposed under this subsection are “in addition to other penalties as may be prescribed by law.” The Secretary may terminate the Rebate Agreement for either violations of the Rebate Agreement or for other good cause shown. 42 U.S.C. § 1396r-8(b)(4)(B)(i). The statute further provides:

Such termination shall not be effective earlier than 60 days after the date of notice of such termination. The Secretary shall provide, upon request, a manufacturer with a hearing concerning such a termination, but such hearing shall not delay the effective date of the termination.

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Id. If there is a termination, the Secretary must notify the states, § 1396r-8(b)(4)(B)(iv), and the Statute requires the Secretary to delay reinstatement of any terminated contract for one calendar quarter absent good cause. 42 U.S.C. § 1396r-8(b)(4)(C).

60. Rebate Agreements are effective only for one year, and “shall be automatically renewed for a period of not less than one year unless terminated under subparagraph (B).” 42 U.S.C. § 1396r-8(b)(4)(A).

61. While the Rebate Agreement does not address remedies for breach of contract, it specifies that it shall be construed under federal common law, and states that nothing in it shall be construed as a waiver of any legal right of the Secretary or the manufacturer under state or federal law. Specifically, it provides that: “The Rebate Agreement shall be construed in accordance with federal common law and ambiguities shall be interpreted in the manner which best effectuates the statutory scheme.”

BAXTER KNEW IT’S CONDUCT WAS ILLEGAL

62. Before she was silenced by her superior, Ms. Sun made clear to Baxter executives Poullos, Bradley, O’Hara, Guihinn and others that Baxter should not use the spread as the incentive for selling its products. the spread was too great, that the prices reported upon which AWP was calculated should be reduced, and that the discounts offered by the Volume Committed Contracts were illegal.

63. Larry Guihinn, Baxter BioScience’s President clearly understood the legal ramifications of the misconduct alleged herein. At a meeting to discuss the pricing of Advate in the late spring or early summer of 2003, Guihinn warned that Baxter would get in trouble if the

government were ever to see the margin analysis memo analyzing Baxter's pricing for all of its pharmaceutical, hematological, and biological products. Park promised Guihinn that the memorandum would not be attached to any emails, and that hard copies of the memorandum would be destroyed. This meeting was attended by Michael Bald-rige, Baxter's Director of Planning, Bradley, Guihinn, Park, Poulos, and Ms. Sun, among others.

64. In July 2003, after the Advate Pricing Meeting, Ms. Sun gave the Park team extensive written materials on the government's prosecution of TAP for falsification of Lupron's AWP, and the \$355 million False Claims Act settlement paid by AstraZeneca for Lupron's competing product, Zoladex. Guihinn told Ms. Sun point blank, that "your job is to keep me out of jail." When Poulos reported this to Park, Mike Baldrige, and Karen Chung (Associate Director of Medical Outcomes Research & Economics), Park, Baldrige, and Chung joked that they would not go to jail because they were ignorant of these practices.

COUNT I

SUBMISSION OF FALSE FEDERAL FALSE CLAIMS

BY FALSIFYING PRICE INFORMATION

65. Relators repeat and reallege each allegation contained in paragraphs 1 through 64 above as if fully set forth herein.

66. This is a *qui tam* civil action brought by Linnette Sun, Greg Hamilton and the government of the United States to recover treble damages and civil penalties under 31 U.S.C. §3729(a) of the False Claims Act.

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67. Baxter violated 31 U.S.C. §3729(a) by conspiring, to present and by causing false claims to be present, used and then presented to the United States Government in connection with its fraudulent and illegal practices.

68. The United States Government, by and through CMS, DHHS, RRB, OPM, and possibly other Federal agencies, and unaware of Baxter's fraudulent and illegal practices, paid the claims submitted by health care providers and third party payers in connection therewith.

69. Had the United States Government known that Baxter was violating federal laws, it would not have paid the claims submitted by health care providers and third party payers in connection with Baxter's fraudulent and illegal practices.

70. As a result of Baxter's violations of 31 U.S.C. §3729(a), the United States has been damaged in an amount in the millions of dollars, exclusive of interest.

71. Relators Sun and Hamilton are private persons with direct and independent knowledge of the allegations of this Complaint, who have brought this action pursuant to §3730(b) on behalf of themselves and the United States Government.

COUNT II

VIOLATION OF THE FALSE CLAIMS ACT THROUGH STARK ACT VIOLATIONS

72. Relators repeat and reallege each allegation contained in paragraphs 1 through 64 above as though fully set forth herein.

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73. This is a *qui tam* civil action brought by Linnette Sun, Greg Hamilton and the government of the United States to recover treble damages and civil penalties under 31 U.S.C. §3729(a) of the False Claims Act.

74. Baxter violated 31 U.S.C. §3729(a) by conspiring, to present and by causing false claims to be present, used and then presented to the United States Government in connection with its fraudulent and illegal practices.

75. The Stark Act II, 42 U.S.C.. §1395nn (a)(1), a civil penalty provision, provides that if a Physician has a financial relationship with an entity,

(A) the physician may not make a referral to the entity for the furnishing of designated health services for which payment otherwise may be made under this subchapter, and the entity may not present or cause to be presented a claim under this subchapter or bill to any individual, third party payor, or other entity for designated health services furnished pursuant to a referral prohibited under subparagraph (A).

U.S.C.A. §1395nn(a)(1).

76. The term “financial relationship” under the Stark Act includes compensation arrangements between a physician and an entity. *See* 42 U.S.C.A. §1395nn (a)(2)(B).

77. The term “designated health services” under the Stark Act includes clinical laboratory services, outpatient prescription drugs, and inpatient and outpatient hospital services. *See* 42 U.S.C.A. §1395nn (h)(6).

78. Baxter violated 42 U.S.C.A. §1395nn(a) when it knowingly and willfully entered into arrangements in which providers were offered discounts based on their ability to move market share within their institutions, pursuant to Volume Committed Contracts.

79. Although "safe harbor" regulations exist to protect certain relatively innocuous and even beneficial commercial arrangements, no such provision protects the discounts made by Baxter pursuant to its fraudulent schemes. The discounts by Baxter in this case were made for the sole purpose of increasing Baxter's profits at the expense of patients, its competitors, and the federal and state governments. Baxter targeted those providers based on the volume and value of referrals they could make.

80. 38 U.S.C.A. § 8126, and the regulations based thereon, and contracts signed with Baxter by the federal programs listed herein below require that when drug manufacturers furnish their prescription products to Federal agencies, such as the Veterans' Administration, Public Health Service, including the Indian Health Service, and the Department of Defense, they must furnish them at the "best price."

81. Had the United States Government known that Baxter was violating federal laws, including the Anti-Kickback provisions, the Stark Act, and the best pricing requirements, it would not have paid the claims submitted by health care providers and third party payers in connection with Baxter's fraudulent and illegal practices.

82. As a result of Baxter's violations of 31 U.S.C. §3729(a), the United States Government has been damaged in an amount in the millions of dollars, exclusive of interest.

83. Relators Sun and Hamilton are private persons with direct and independent knowledge of the allegations of this Complaint, who have brought this action pursuant to §3730(b) on behalf of themselves and the United States Government. As a result of Baxter's violations of 31 U.S.C. §3729(a), the United States Government has been damaged in an amount in the millions of dollars, exclusive of interest.

COUNT III

VIOLATION OF THE FALSE CLAIMS ACT THROUGH BEST PRICE VIOLATIONS

84. Relators repeat and reallege each allegation contained in paragraphs 1 through 64 above as though fully set forth herein.

85. In engaging in the fraudulent and illegal practices cited herein, including but not limited to the false reporting of WAC, and the "Volume Committed Contracts," Baxter knowingly failed and refused to furnish its products to the Federal agencies at the best price, in violation of 38 U.S.C.A. § 8126, as these same discounts and rebates were not passed on to the Federal agencies.

86. Compliance with applicable Medicare, Medicaid, best pricing requirements, and various other federal and state laws was an implied, and upon information and belief, also an express condition of payment of claims submitted to the United States Government by health care providers and third party payers in connection with Baxter's fraudulent and illegal practices.

87. As a result of Baxter's violations of 31 U.S.C. §3729(a), the United States has been damaged in an amount in the millions of dollars, exclusive of interest.

88. Relators Sun and Hamilton are private persons with direct and independent knowledge of the allegations of this Complaint, who have brought this action pursuant to §3730(b) on behalf of themselves and the United States Government. As a result of Baxter's violations of 31 U.S.C. §3729(a), the United States Government has been damaged in an amount in the millions of dollars, exclusive of interest.

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COUNT IV

RETALIATION IN VIOLATION OF 31 U.S.C. §3730(h)

89. Relator Linnette Sun repeats and repleads and incorporate by reference herein each and every one of the allegations contained in paragraphs 1-64, inclusive, as though fully set forth herein.

90. Ms. Sun was retaliated against and fired from her employment at Baxter in direct retaliation for her efforts to investigate the false claims described hereinabove, her efforts to develop information which would be used in the prosecution of a false claims action, and her resistance to the submission of false claims. Defendant sued herein carried out these acts in violation of 31 U.S.C. §3730(h).

91. As a direct, foreseeable, and legal result of said wrongful acts by Defendant, Ms. Sun has suffered and will continue to suffer substantial losses in earnings and other employment benefits, along with other incidental and consequential damages and losses, all in an amount to be proven at time of trial.

92. As a further direct, foreseeable, and legal result of said wrongful acts of Defendant sued herein, Ms. Sun has suffered and will continue to suffer mental pain and anguish, all other damage in an amount to be proven at time of trial.

93. As a further direct, foreseeable, and legal result of said wrongful acts by said Defendant, Ms. Sun has incurred attorneys' fees and other consequential damages in an amount to be determined, for which Ms. Sun claims a sum to be established according to proof.

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COUNT V

RETALIATION IN VIOLATION OF CALIFORNIA GOVERNMENT CODE §12653

94. Relator Linnette Sun repeats and repleads and incorporate by reference herein each and every one of the allegations contained in paragraphs 1-64, inclusive, as though fully set forth herein.

95. Ms. Sun was retaliated against and fired from her employment at Baxter in direct retaliation for her efforts to investigate the false claims described hereinabove, her efforts to develop information which would be used in the prosecution of a false claims action, and her resistance to the submission of false claims to the State of California. Defendant sued herein carried out these acts in violation of California Government Code §12653.

96. As a direct, foreseeable, and legal result of said wrongful acts by Defendant, Ms. Sun has suffered and will continue to suffer substantial losses in earnings and other employment benefits, along with other incidental and consequential damages and losses, all in an amount to be proven at time of trial.

97. As a further direct, foreseeable, and legal result of said wrongful acts of Defendant sued herein, Ms. Sun has suffered and will continue to suffer mental pain and anguish, all other damage in an amount to be proven at time of trial.

98. As a further direct, foreseeable, and legal result of said wrongful acts by said Defendant, Ms. Sun has incurred attorneys' fees and other consequential damages in an amount to be determined, for which Ms. Sun claims a sum to be established according to proof.

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99. The aforesaid acts were carried out maliciously and in conscious disregard of Ms. Sun's rights. As such, Defendants should be held liable for exemplary damages in sums sufficient to punish said Defendants, and to deter future similar misconduct.

COUNT VI

RETALIATION IN VIOLATION OF CALIFORNIA PUBLIC POLICY

100. Relator Linnette Sun repeats and repleads and incorporate by reference herein each and every one of the allegations contained in paragraphs 1-64, inclusive, as though fully set forth herein.

101. Ms. Sun worked for Defendant in Santa Barbara, California. She was retaliated against and fired from her employment at Baxter in direct retaliation for her efforts to investigate the false claims described hereinabove, which are violations of state and federal laws. Defendant sued herein fired Ms. Sun in violation of California's public policy.

102. As a direct, foreseeable, and legal result of said wrongful acts by Defendant, Ms. Sun has suffered and will continue to suffer substantial losses in earnings and other employment benefits, along with other incidental and consequential damages and losses, all in an amount to be proven at time of trial.

103. As a further direct, foreseeable, and legal result of said wrongful acts of Defendant sued herein, Ms. Sun has suffered and will continue to suffer mental pain and anguish, all other damage in an amount to be proven at time of trial.

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104. As a further direct, foreseeable, and legal result of said wrongful acts by said Defendant, Ms. Sun has incurred attorneys' fees and other consequential damages in an amount to be determined, for which Ms. Sun claims a sum to be established according to proof.

COUNT VII

MASSACHUSETTS FALSE CLAIMS ACT

105. Relators repeat and reallege each allegation contained in paragraphs 1 through 64 above as if fully set forth herein.

106. This is a *qui tam* action brought by Linnette Sun, Greg Hamilton and the Commonwealth of Massachusetts for treble damages and penalties under Massachusetts False Claims Act, Mass. Gen. Laws Ann. 12 § 5(A) *et seq.*

(10)7. Mass. Gen. Laws Ann. 12 § 5B provides liability for any person who knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval; (2) knowingly makes, uses, or causes to be made or used, a false record or statement to obtain payment or approval of a claim by the commonwealth or any political subdivision thereof; (3) conspires to defraud the Commonwealth or any political subdivision thereof through the allowance or payment of a fraudulent claim; is a beneficiary of an inadvertent submission of a false claim to the common wealth or political subdivision thereof, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the commonwealth or political subdivision within a reasonable time after discovery of the false claim.

108. Baxter violated Mass. Gen. Laws Ann. 12 § 5B and knowingly caused hundreds of thousands of false claims to be made, used and presented to the Commonwealth of

Massachusetts from at least 1998 to the present by its reporting of false pricing statements regarding its products.

109. The Commonwealth of Massachusetts, by and through the Massachusetts Medicaid program and other state health care programs, and unaware of Baxter's fraudulent and illegal practices, paid the claims submitted by health care providers and third party payers in connection therewith.

110. Honest reporting of WAC data and provision of the best price to Medicaid was an implied, and upon information and belief, also an express condition of payment of claims submitted to the Commonwealth of Massachusetts.

111. Had the Commonwealth of Massachusetts known that Baxter was violating the federal and state laws cited herein, it would not have paid the claims submitted by health care providers and third party payers in connection with Baxter's fraudulent and illegal practices.

112. As a result of Baxter's violations of Mass. Gen. Laws Ann. 12 § 5B, the Commonwealth of Massachusetts has been damaged in an amount to be determined, exclusive of interest.

113. Relators Sun and Hamilton are a private persons with direct and independent knowledge of the allegations of this Complaint, who have brought this action pursuant to Mass. Gen. Laws Ann. 12 § 5(c)(2) on behalf of himself and the Commonwealth of Massachusetts.

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COUNT VIII

VIOLATION OF THE CALIFORNIA FALSE CLAIMS ACT

114. Relators repeat and reallege each allegation contained in paragraphs 1 through 64 above as if fully set forth herein.

115. This is a *qui tam* action brought by Linnette Sun, Greg Hamilton and the STATE of California to recover treble damages and civil penalties under the California False Claims Act, Cal. Gov't. Code § 12650 *et seq.*

116. Cal. Gov't Code § 12651(a) provides liability for any person who-

(1) knowingly presents, or causes to be presented, to an officer or employee of the state or of any political division thereof, a false claim for payment or approval;

(2) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the state or by any political subdivision;

(3) conspires to defraud the state or any political subdivision by getting a false claim allowed or paid by the state or by any political subdivision.

(8) is a beneficiary of an inadvertent submission of a false claim to the state or a political subdivision, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the state or the political subdivision within a reasonable time after discovery of the false claim.

117. Baxter violated California laws by knowingly allowing tens of thousands of false claims to be submitted and presented to the State of California from at least 1998 to the present by its reporting of false pricing statements regarding its products.

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118. The State of California, by and through the California Medicaid program and other state health care programs, and unaware of Baxter's fraudulent and illegal practices, paid the claims submitted by health care providers and third party payers in connection therewith.

119. Honest reporting of WAC data and provision of the best price to Medi-Cal was an implied, and upon information and belief, also an express condition of payment of claims submitted to the State of California in connection with Baxter's fraudulent and illegal practices.

120. Had the State of California known that Baxter was violating the federal and state laws cited herein, it would not have paid the claims submitted by health care providers and third party payers in connection with Baxter's fraudulent and illegal practices.

121. As a result of Baxter's violations of Cal. Gov't Code §12651(a), the State of California has been damaged in an amount to be determined exclusive of interest.

122. Relators Sun and Hamilton are persons with direct and independent knowledge of the allegations of this Complaint, who have brought this action pursuant to Cal. Gov't Code § 12652(c) on behalf of himself and the State of California.

123. This Court is requested to accept pendant jurisdiction over this related state claim as it is predicated upon the same exact facts as the federal claim, and merely asserts separate damages to the State of California in the operation of its Medicaid program.

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COUNT IX

HAWAII FALSE CLAIMS ACT

124. Relators repeat and reallege each allegation contained in paragraphs 1 through 64 above as if fully set forth herein.

125. This is a *qui tam* action brought by Linnette Sun, Greg Hamilton and the State of Hawaii to recover treble damages and civil penalties under the Hawaii False Claims Act, Haw. Rev. Stat. § 661-21 *et seq.*

126. Haw. Rev. Stat. § 661-21(a) provides liability for any person who-

(1) knowingly presents, or causes to be presented, to an officer or employee of the state a false or fraudulent claim for payment or approval;

(2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the state;

(3) conspires to defraud the state by getting a false or fraudulent claim allowed or paid; or

(8) is a beneficiary of an inadvertent submission of a false claim to the State, who subsequently discovers the falsity of the claim, and fails to disclose the false claim to the State within a reasonable time after discovery of the false claim.

127. Baxter violated Haw. Rev. Stat. § 661-21(a) and knowingly caused tens of thousands of false claims to be made, used and presented to the State of Hawaii from at least 1998 to the present by its violation of federal and state laws.

128. The State of Hawaii, by and through the Hawaii Medicaid program and other state health care programs, and unaware of Baxter's fraudulent and illegal practices, paid the claims submitted by health care providers and third party payers in connection therewith.